United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7295

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United States Court of Appeals

FOR THE SECOND CIRCUIT

FOR THE SECOND CIRCUIT

CARL A. BEAZER, *et al.*,

Plaintiffs-Appellees-Cross-Appellants,

—against—

NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

Defendants-Appellants-Cross-Appellees.

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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ALPHONSE E. D'AMBROSE
Attorney for New York City Transit Authority and related transit defendants
370 Jay Street
Brooklyn, N. Y. 11201
212—330-4327

W. BERNARD RICHLAND, Esq.
Corporation Counsel of the City of New York
Attorney for the Civil Service Commission of the City of New York and related defendants
Municipal Building
New York, N. Y. 10007

ELIZABETH B. DUBOIS, Esq.
(Legal Action Center of the City of New York, Inc.)
Attorney for Plaintiffs
271 Madison Avenue
New York, N. Y. 10016
212—679-6502

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER et al., Plaintiffs, vs NEW YORK CITY TRANSIT AUTHORITY et al., Defendants.	72 Civil 5307

New York, N. Y.

January 11, 1977 - 2:15 p.m.

Before

HON. THOMAS P. GRIESA,

District Judge.

APPEARANCES:

ERIC BALBER, Esq.,
MS. ELIZABETH DuBOIS and
MARK C. MORRIL, Esq.,
Attorneys for Plaintiffs

EDWARD SUMMERS, Esq., and
GILBERT DUNN, Esq.,
Attorneys for Defendants

- - -

Now, there are some points that were made in the plaintiffs' memorandum, particularly about Diaz, but I don't know if there is any evidence to support it.

In the plaintiffs' brief of September 24th, filed September 28th, pages 10 and 11, the brief says that Diaz was in actuality charged with and convicted for a disorderly offense, for which he received a sentence of a $5 fine or, in the alternative, two days of incarceration.

Is there any evidence in the record?

MR. BALBER: I don't believe there is any evidence in the record either to support the Transit Authority's claim as to his criminal record or to support this.

What happened was, the Transit Authority re-examined the plaintiff Diaz this last spring, and at that time it inquired about his criminal record. We furnished them a court disposition slip, and that's where this information was derived from.

We will be glad to furnish it to the Court, and it can be made an exhibit and part of the record.

(Plaintiffs' Exhibits 1000, 1001, 1002, 1003, 1004 and 1005 were received in evidence.)

THE COURT: I think some of these things probably can be agreed to. There was the reference to the criminal offense in the Transit Authority's report, and if you are referring to the same thing, can we have it stipulated that the conviction related to what is stated on page 11.

Did you accurately read the document, Mr. Balber?

MR. BALBER: I certainly hope so, your Honor.

THE COURT: Is there any question about that?

MR. SUMMERS: We are trying to find where we made reference to Diaz.

THE COURT: This was just a general statement. You

were not specific about what it refers to. You do say it is a conviction in connection with possessing a hypodermic needle.

What was he convicted of? What was the crime he was charged with?

MR. SUMMERS: We need the original record to be specific.

THE COURT: What did you use when you wrote this out?

MR. SUMMERS: He was found in possession of a needle, I guess.

THE COURT: Who wrote this?

MR. DUNN: Mr. McLaren.

THE COURT: Was he looking at the records?

MR. SUMMERS: Yes. He had them available.

THE COURT: He doesn't say. He didn't bother to say what the man was convicted of or what the penalty was. They say they read it, and this is what it says, and I don't think they are lying to us.

Can it not be stipulated subject to check that the conviction was for disorderly conduct, for which Mr. Diaz received a sentence of a $5 fine or two days of incarceration?

MR. SUMMERS: That is a different kettle of fish.

Possession of a hypodermic needle is not disorderly conduct, and I can't see any relation between these two.

THE COURT: Unless this was the result of something which we know as plea bargaining.

MR. SUMMERS: Possibly, but subject to checking it -- I will agree to anything, but it is subject to check.

THE COURT: Stipulate subject to check and get back to the Transit Authority. Subject to check and correction by noon tomorrow that the actual conviction was for disorderly conduct, for which Diaz received a sentence of a $5 fine or two days' incarceration.

Is that agreed, subject to check, Mr. Dunn?

MR. DUNN: Yes, sir.

THE COURT: All right.

Now, there are a couple of points about Mr. Diaz's employment which are represented in the brief, but I don't think we have anything in the record on it.

Page 10 of the plaintiffs' brief talks about this employment history of Diaz. Some of the things were brought out at the trial, and there are some of the things here in the brief that I think are supplemental to what was in the trial.

For instance, there is a statement, "During 1973, Diaz did sheet metal work for two new employers. He

voluntarily left the first, in search of higher wages, and he voluntarily left the second because the company involved relocated."

Now, I don't think there is anything in the testimony about that.

MR. BALBER: It was not in the testimony. However, Mr. Diaz did verify, in answer to an interrogatory served on the TA to that effect --

THE COURT: You are stating that if he were called to testify he would testify to that effect?

MR. BALBER: Yes, your Honor; definitely.

THE COURT: All right.

Now, let's go to another point.

You say Diaz then collected unemployment compensation for several months, after which time he went to work as a helper in a bakery. That is not too important. I think that his statement about going to work in a bakery was testified to, but I think the important thing is what comes next. The bakery went out of business, and Diaz was forced to collect unemployment compensation for a period of time.

Diaz now works as a trucker's helper.

Now, you have talked to Mr. Diaz, I take it, and this is what he would testify to if he were called?

MR. BALBER: Yes, your Honor, and we also gave

that information to the Transit Authority last spring. Presumably they had a chance to check it out.

THE COURT: Mr. Dunn and Mr. Summers, would you stipulate that Mr. Diaz would testify to what I have just mentioned?

MR. DUNN: No, your Honor. I think it is unfair to ask us to do so at this point. If Mr. Diaz had been asked at the trial, we would have had an opportunity to respond to questions. I think it is unfair to ask us to agree.

THE COURT: Was this information given to you last spring?

MR. DUNN: I don't know, your Honor.

THE COURT: Whom were you dealing with? Whom were you giving information to?

MR. DUNN: Had we known the questions were coming up today, I would have prepared for it. I received a call from your clerk and prepared certain information.

THE COURT: This should not be complicated. I am quite certain that the facts of when he was working for a bakery or receiving unemployment compensation are not going to be too controversial.

To whom did you give this information, Mr. Balber?

MR. BALBER: Mr. Diaz filled out a raft of questionnaires, which asked him about his prior and current employ-

ment.

THE COURT: He filled out questionnaires to the TA?

MR. BALBER: Yes, sir.

THE COURT: Where are the questionnaires?

MR. DUNN: Whatever he completed is in the TA's possession, and we can certainly obtain them, your Honor, and we could have obtained them for today's hearing had we been asked.

THE COURT: Fine, but it may be that we can save having another hearing by asking if this is a fair summary of what was contained in the questionnaires.

MR. BALBER: Yes. And Mr. Diaz has not furnished an affidavit to that effect, but it is certainly the truth.

THE COURT: Can you stipulate he would testify to this effect if he were so called, again subject to check by noon tomorrow?

MR. DUNN: May I very respectfully request, your Honor -- I do want to accommodate the Court by agreeing to that -- could you enlarge the time? Rather than noon tomorrow, could you make it noon the following day? I have requested a daily copy of the transcript today. That will give us an opportunity to determine everything we are stipulating to subject to verification.

THE COURT: Why don't you have somebody just bring it over right now? Where are they?

MR. DUNN: They are at the Transit Authority, your Honor.

THE COURT: They are just over in Brooklyn, aren't they?

MR. DUNN: If I can be supplied with a list of the material the Court desires, I will have it sent over.

THE COURT: Just have the questionnaires brought over.

MR. DUNN: I am not sure they can be brought here this afternoon.

THE COURT: I would like very much to do as much as we can to wind this up today, and I honestly think we are not dealing with controversial things. These are things Mr. McLaren in his memorandum referred to in general terms. These appear to be the specifics. The specifics are more helpful than the generalities, unfortunately.

MR. SUMMERS: The only way we could get them, I think, without confusing things more, is by calling up and asking somebody; but they might not bring over the right things.

Mr. Dunn can carry on here, and I can go back and bring back the particular documents you want.

THE COURT: Let's hold off on that.

In the material I have gone through, the only thing I would like checked out, which I think is not in the record sufficiently, is the thing about Diaz's conviction and then the specifics of his employment. That's really all.

I have very much to have you run over there, but that's really it. I don't have anything else.

MR. DUNN: If these are the only two items you are asking us to agree to stipulate to subject to verification by tomorrow, I think we can live with that.

THE COURT: All right. Let's go to the matter of what my office called about: the evidence with regard to Mr. Frazier.

What I asked was this:

In the July 18th report dealing with Mr. Frazier, the Transit Authority says that Frazier checked "No" to the question of whether he had been treated for drug addiction. This is when he was applying to be a bus driver, February 19, 1971.

Then the report also says that Mr. Frazier obtained his driver's license by falsely stating on his application to the Motor Vehicle Bureau that he had never been confined or treated for narcotics addiction.

I called to ask if you could provide evidence that

he had been treated for narcotics addiction prior to the time he filled out his questionnaire to the Transit Authority in February 1971 and that he had been confined or treated for narcotics addiction before he applied for his driver's license.

Have you got any material on that?

MR. DUNN: Yes, your Honor. I would like to address each of those separately.

In the first instance, there is nothing in the record to indicate that Mr. Frazier had been treated for narcotics addiction before 1971. There is nothing in the July 19, 1976 memorandum that is intended to suggest that the answer was not truthful on the 1971 application.

THE COURT: Then what was the reason for noting it?

MR. DUNN: At that time, narcotic screening was not done routinely. Had Mr. Frazier answered the question -- there was nothing on Mr. Frazier's application at that time that alerted the Authority that a narcotics screening should have taken place.

THE COURT: You are not saying he was falsifying, are you?

MR. DUNN: No, sir. If that implication appears in the memorandum it was unintentional.

THE COURT: How about the driver's license?

MR. DUNN: The driver's license: we maintain the application was perjurious on the part of Mr. Frazier. The application is in the record as Defendants' Exhibit G.

THE COURT: What is the date of that?

MR. DUNN: January 1973. The actual stamp on the license, the validation on the license is January 16, 1973.

At page 47 of the transcript, the application shows it was dated January 12, 1973. Mr. Frazier was treated twice early in 1972 --

THE COURT: What is the question?

MR. DUNN: It is Question 5 on the application for renewal of a chauffeur's license. The specific question is: "Have you been confined to an institution or received treatment for narcotics addiction?"

The handwritten answer was "No".

THE COURT: And that application was January 1973?

MR. DUNN: It was, your Honor, and it is in the record as Defendants' Exhibit G.

THE COURT: There are several things to discuss.

One other question -- I will skip that for the moment.

The things that I believe I need to decide in response to the various applications presently pending are as follows:

* * *

THE COURT: I think the best way to get our discussion going is to voice some tentative thoughts of mine, because otherwise I think everybody will be groping.

In the first place, I think I will go back to another subject.

As to the four individual plaintiffs and as to Mr. Wright, it is my tentative conclusion that Mr. Diaz and Mr. Frazier are entitled to employment. It is my tentative conclusion that Beazer, Reyes and Wright are not.

The sole reason for my negative conclusion about Beazer, Reyes and Wright is this: that each of them violated Rule 11(d) of the Transit Authority, the prohibition about narcotics usage. Not with respect to methadone. That would not be a sanctionable violation, in my view, but with respect to the usage of heroin and the addiction to heroin during the times when they were employed by the Transit Authority.

I am trying to voice this tentatively so you know what to discuss. My view is that I don't see how I could rule the Transit Authority could not impose severe sanctions for the use of heroin, addiction to heroin while engaging in work as a tower man or ventilation maintainer or whatever or really anything at the Transit Authority.

If they want to impose as a sanction a permanent bar from employment, I may disagree with that as a matter of policy, but I don't see how I could constitutionally compel them to change their policy in that regard.

That is the sole basis on which there is any valid reason to exclude Beazer, Reyes and Wright.

Now, as I said, I see absolutely no reason to exclude Frazier or Diaz. I think as to Frazier I would only hold that as to his application for employment as a car cleaner. I think that the Transit Authority is not compelled to take him on as a bus operator, which was his other applica-

tion.

As we all know, he made applications for two jobs. He was addicted to heroin at a certain point, and if the Transit Authority, out of an abundance of caution, does not want to employ such persons as bus operators, since that is a critical position, why, I would not feel that is a constitutional violation.

Also, it seems to me that Mr. Balber's affidavit contained a number of instances which, if the factual statements are correct, would involve people in exactly the same position or essentially the same position as Diaz and Frazier. In other words, they would be people who had not violated any anti-heroin rule of the Transit Authority, because either they had never worked for the Transit Authority or they came to work for the Transit Authority when they were on methadone, and it seems to me there are a number of instances mentioned there which on their face seem to be very compelling cases of the type of thing, discrimination, that we are talking about here as being unconstitutional.

There may be other cases in the list contained in Exhibit AAAA.

* * *

11 a.m.

(Recess)

THE COURT: On the record.

We started discussing off the record the application for attorneys' fees. I asked Mr. Dunn and Mr. Summers if they wished to have any testimony or cross-examination or question in any way the plaintiffs' lawyers about the facts about their work in the case, and I think you said you did not; is that correct?

MR. DUNN: That was my response, your Honor, yes.

THE COURT: I then asked Ms. DuBois if your organization receives grants to sustain it, and she said yes, and I asked if that should be taken into account in fixing the fees, and Mr. Morril started to respond.

Okay.

MR. MORRIL: Yes, your Honor.

I was saying that we think the standard was clear under Title 7, but it certainly has been made more crystal-clear under the 1976 Attorneys Award Act, which is discussed both in our October 29, 1976 brief and our reply brief dated December 8, 1976.

The legislative history to the 1976 Act is appended to the October 29 brief, your Honor. That legislative history cites all of the cases which are in

which

those briefs which support our position and is replete with language, such as civil rights plaintiffs should not be singled out for different and less favorable treatment, referring to securities and antitrust cases.

THE COURT: You have Torres v. Saxe in the Second Circuit. Was that decided after the Act?

MR. MORRIL: No, before. I am looking at the House report, page 8.

The legislative history recites not only Torres v. Saxe with approval, but also a leading Fifth Circuit case, Fairleigh v. Patterson.

These cases make it crystal-clear that is not a factor to be taken into account.

THE COURT: What about the Rios decision of Judge Bonsal?

MR. MORRIL: Your Honor, in the Rios decision Judge Bonsal took the financial status of the union into account.

It just seems to us to be a totally different situation. Judge Bonsal emphasized the fact that this was a membership organization, that the fee might well bankrupt this union, and that there was no way to spread this fee beyond the limited membership of the union.

Again, it seems that, although the Rios case

which

is clearly distinguishable, the 1976 Act also explicitly deals with this issue, and notes in the legislative history that it's not only proper to assess a fee against a governmental entity, but it's particularly appropriate.

THE COURT: This isn't a governmental entity.

MR. MORRILL: I believe the Transit Authority is a public-benefit corporation under New York law. The reasoning of the 1976 Act's legislative history is that it's particularly appropriate to assess this type of defendant because the burden of the fee can ultimately be spread to the entire tax base of which plaintiffs themselves are even members.

Again, the legislative history is strong and explicit on that, your Honor.

THE COURT: This is all very nice in the context where there is just plenty of money, but a few hundred thousand dollars, I have got to assume, means something to the Transit Authority in this day and age.

I have no doubt they are cutting back. They are cutting back their services, and every hundred thousand dollars paid to somebody means that less hundred thousand dollars in painting and doing whatever theyhave to do. I don't have any doubt that that is what it amounts to, because there is an awful lot of political pressure to

[illegible] amount raising the fares.

I really think, in all fairness -- I certainly want to carry out the statutory purpose, and I want to faithfully do what I should do, but it seems to me this litigation was undertaken -- it's extremely interesting. Youhave all the positive elements working for you that are certainly out in the decisions, and you have done a terribly good job, and there was risk attendant in investigating all this, but still, if your work -- it really is a question of whether it's fair in the public interest to tax them with several hundred thousand dollars in fees if your work really is undertaken on the basis of grants.

I would appreciate a maximum amount of objectivity here.

MR. MORRIL: If I could respond briefly and as objectively as possible.

First of all, if there were just a balancing of the question, it is, it seems to me, your Honor would also have to take into account this fee,while it may seem like a large amount, is a tiny proportion of the Transit Authority's budget. It's absolutely crucial to the livelihood of the Legal Action Center that in order to continue in existence we get fees like this.

Secondly, it seems to me it's not totally a question of discretion or balancing of the equity, particularly in light of this 1976 legislation, which, if we look at just the chronology of the enactment of that legislation, it was passed essentially on the heels of Alyeska decision, and again, as reflected in its legislative history, it was enacted after extensive testimony in Congress that that Alyeska decision threatened the very existence of all public-interest law firms and civil rights litigation in general.

A consortium of foundations set up a group called the Council for Public Interest Law at around the same time, your Honor. They produced extensive reports and testimony which clearly point out that the only way that civil rights litigation and public interest law can go forward in this country is with the receipt of attorneys' fees, and it was for that very clear reason that the 1976 legislation was enacted, and that is in the legislative history.

THE COURT: Let me be clear.

When you applied for an award under Title 7, it was at a time when there was some doubt about whether there could be an award of fees on a 1983 basis; is that right?

1 which
2 MR. MORRIL: There was no doubt. We
3 couldn't. Now we are back to the situation where we can.
4 THE COURT: In other words, the 1976 statute
5 means that, in your view, you can have an award of fees
6 under all theories of the decision; right?
7 MR. MORRIL: That's right, your Honor.
8 Also, just to put this in a little bit more
9 of a context, I would respectfully refer the Court to
10 the case which we submitted with our reply brief, the
11 December brief, the Kalamazoo case, where the District
12 Court specifically said that it felt that it would take
13 into account the desperate financial straits of the
14 City of Kalamazoo, and in doing so the Court limited the
15 multiplier, or the incentive award that it gave in that
16 case to a factor of 2.
17 That case is particularly striking because
18 it involved almost the same number of hours that were
19 involved in this case, and on the basis of 4,000 hours,
20 and I believe in this case we had almost 4,500 hours,
21 that Court awarded, with the incentive multiplier I believe
22 at a rate of $130 an hour, which is far more than the
23 plaintiffs have even asked for in this case, and that
24 was specifically taking into account defendant's
25 financial straits.

MS. DuBOIS: Can I make a comment since you asked about the funding of our organization?

It's true we have received funds from foundations, and it is also true that those foundations have made absolutely clear to us we will not go on as an organization if we cannot find other means of support. That has been made clear to every other public-interest law firm in the country.

The only way of becoming even in a limited way self-sufficient is to get court awards. We are forbidden by law by the Appellate Division of New York State to collect fees. We are only allowed to bring cases where clients cannot afford our services.

When talking about this kind of legislation and whether fees should be awarded, we are talking about whether public attorneys will be able to bring pro bono cases. Without the possibility of realistic fees being given, what it means is that the kinds of plaintiffs in these kinds of cases will not get representation in the future.

THE COURT: Switching from that, another question is the question of whether the case did not have somewhat more luxurious staffing than it would have had under other circumstances.

I think the plaintiffs' attorneys did a very fine job. That's an understatement. But I have wondered whether if, for economic reasons, you were forced to pare your staffing of it down you would not have pared it down.

It seems to me that every occasion when you have been to court, or almost every occasion, there has been you, Ms. DuBois, and you have had your two assistants, Mr. Morril and Mr. Balber, and that is a lot of hours, it's an awful lot of hours.

MS. DuBOIS: Your Honor, we have cut down the court hours, as I have pointed out in our papers.

Certainly, we have made every effort to avoid duplication. Having everybody in court meant everybody knew what was going on, and I don't think it meant multiplying the amount of work.

THE COURT: That's a valid point.

How would you, for instance, divide the projects?

MS. DuBOIS: Essentially, Mr. Balber was responsible in the trial and preparation for the expert witnesses as was indicated by his participation in the trial. Mr. Morril was responsible for the employer, and all of that expert testimony.

We tried to avoid any kind of duplication as far as that was concerned.

THE COURT: Mr. Morril was responsible for what?

MR. MORRIL: For employer witnesses, some of the named plaintiffs, and the reexamination of some of the factual witnesses from the Transit Authority.

THE COURT: What were you responsible for?

MS. DuBOIS: I tried to have overall view of the case, and I certainly worked on some of the papers, and I participated in limited parts of the trial.

To go back to the point whether there has been luxurious representation, we try to give first-class representation to these methadone patients, and I think the standard that the new Attorneys Fee Act indicates is that the people who are deprived of constitutional rights deserve first-class representation, and that's why it specifies fees be set not as a kind of second-class case, but the fees should be set the same as in antitrust cases.

THE COURT: Can you look at the last page of your affidavit? This is Mr. Morril's affidavit.

The 1,109 hours at $100 an hour, that's entirely yours?

MR. MORRIL: That is Ms. DuBois'.

THE COURT: By the time of trial, Mr. Balber, you had been out of law school --

MR. BALBER: The trial started in October 1974 and ended sometime in the winter of 1975.

THE COURT: So you had been out of law school over two years?

MR. BALBER: Yes.

THE COURT: Is the same thing true of you, Mr. Morril?

MR. MORRIL: Yes, your Honor.

THE COURT: One thing I would think is that isn't the $60 an hour fairly low?

MR. MORRIL: The way we arrived at the $60 was to try and take into account the fact that there was a span in the amount of time we had been out of law school from about two years to nearly five years in the course of the litigation.

THE COURT: Are law firms charging $60 an hour for new associates?

MR. MORRIL: I believe they are for new associates. For people of our class, the class of '72 --

THE COURT: Somebody out of law school for two years, they are still charging $60 an hour?

MR. MORRIL: I believe so, though we tried

about this application to pick conservative figures, and I think I got figures from $60 to $75 an hour.

THE COURT: Are there any disbursements requested?

MR. MORRIL: Yes, your Honor. Exhibit B, I believe.

We have listed our costs and disbursements, which are roughly $14,000.

THE COURT: Did you get daily copy during the trial?

MR. MORRIL: I think only parts of it, your Honor. There were a lot of trial days, your Honor.

MR. BALBER: We got daily copy -- we tried to avoid it because it's so expensive. The only time I can recall our getting daily copy is when the cross-examination of a witness went over days and we wanted to look at the testimony while he was on the stand.

MR. MORRIL: The only instance I remember is when Dr. Trigg testified.

THE COURT: What were you paying per page?

MR. MORRIL: The standard rate.

THE COURT: Youwere paying for original and what?

MR. MORRIL: For the original and one carbon, I

[illegible].

MS. DuBOIS: No, we just got one copy.

THE COURT: You are sure there were only about two days of daily copy?

MR. MORRIL: I believe so. I know we did not have the transcript available for most of the trial.

Then there was a significant gap in time between the two halves of the trial.

THE COURT: I have run through the things I wanted to ask you about, and if anybody has any further comments I would like to try to get some rulings down right now on the points we have talked about.

If you have any further comments you are welcome to make them.

MS. DuBOIS: Your Honor, just on the attorney's fee thing, we consider it very important, aside from the amount, that your Honor make a ruling that is covered by the new Act, because I think that would avoid any need for the --

THE COURT: It would be, wouldn't it?

MS. DuBOIS: Yes, it's clearly covered and I think it should be in your ruling because the standards are significantly different and it will remove any argument about what the standards should be, and also any need for

match.

the Second Circuit to worry about Title 7 on that particular issue.

THE COURT: Okay.

Fair Trade 87

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

CARL A. BEAZER, et al., :

Plaintiffs, :

-against- : 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY, :

Defendant. :

----------x

January 13, 1977
9:30 a.m.

BEFORE:

HON. THOMAS P. GRIESA,

District Judge.

A P P E A R A N C E :

ELIZABETH DuBOIS, ESQ.,
ERIC D. BALBER, ESQ.,
MARK MORRILL, ESQ.,
Attorneys for plaintiffs

EDWARD W. SUMMERS, ESQ.,
GILBERT T. DUNN, ESQ.,
Attorneys for defendant

(Recess)

THE COURT: All right, can we start.

There are several matters which need to be taken care of in order to wind up the district court proceeding.

First, there is the matter of what individual remedy, if any, is to be accorded to the four named plaintiffs, Beazer, Reyes, Diaz and Frazier and this determination must be made pursuant to Paragraph 4 of my injunction of May 10, 1976.

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There is also a need to deal with the question of whether any remedy will be accorded to another class member by the name of Nathaniel Wright whose individual claim has come before the Court at this time.

Another matter which must be disposed of is the application of the plaintiffs' attorneys for allowance of fees and disbursements to be charged against the defendants who have been found liable here.

Finally, there is a request for an amendment to the injunction of May 10, 1976, in respect to the procedures to effectuate the relief.

I will put my rulings on the record now in respect to all these matters except for one item which we will defer until early next week and that relates to the back pay claim of individual plaintiffs. I will not attempt to cover that at the moment.

Now, in my injunction of May 10th I directed that the Transit Authority should re-examine the employability of Beazer, Reyes, Diaz and Frazier and should submit a written statement of the Transit Authority's conclusions and I indicated that at that juncture the Court could take appropriate action.

Pursuant to my order, the Transit Authority has submitted a report, dated July 19, 1976. In fact, this

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is a report by W.B. McLaren, executive officer for labor relations and personnel.

It was addressed to Stuart Riedel, general counsel, and was transmitted by the Transit Authority to the Court.

In this report of July 19, 1976 the Transit Authority, through its responsible officer, takes the position that none of these four individuals should be employed or is entitled to employment.

With respect to the class member Wright, Wright was subjected to a disciplinary proceeding in September 1976. At that time a hearing referee found that he should be dismissed from the Transit Authority. No administrative appeal was taken. The Transit Authority approved the recommendation of the hearing referee. This approval was dated November 9, 1976.

Mr. Wright had, in fact, been relieved of his duties at the Transit Authority sometime earlier. The net result of the Transit Authority action was that he was dismissed as of June 15, 1976.

The Transit Authority takes the position in this action that Mr. Wright is not entitled to employment by the Transit Authority.

Now let me deal with each of these individuals

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separately.

To some extent this repeats findings which I made in my original opinion of August 6, 1975, but the details will be gone into a good deal more fully.

I start with plaintiff Carl Beazer. Mr. Beazer started work with the Transit Authority in 1960 as a subway car cleaner.

In 1961 he was promoted to subway conductor.

In 1966 he was promoted to towerman.

Both positions of subway conductor and towerman are regarded by the Transit Authority as critical positions as defined by the Transit Authority and as referred to in my original opinion of August 6, 1975.

A subway conductor assists in the operation of subway trains.

A towerman operates and monitors certain switches and other controls governing the operation of subway trains on tracks and at stations.

Beazer was a heroin addict when he first started work with the subway. He had been an addict since 1952. His addiction continued into the time of his Transit Authority employment.

He was a heroin addict while working as a car cleaner, while working as a subway conductor and while

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working as a towerman.

He knowingly violated Rule 11-B of the Transit Authority which prohibited the use of narcotics by Transit Authority employees without specific permission of the medical officer of the Transit Authority.

The evidence is that Beazer intentionally concealed his heroin usage from the Transit Authority by desisting from heroin usage for periods of time prior to medical examinations. Of course, he failed to make any voluntary disclosure of his heroin usage to the Transit Authority either at the time of his employment or at any other time.

The Transit Authority report attempts to indicate that Beazer evaded a new type of medical examination which was instituted around 1971 for the purpose of more thorough screening for drug usage.

Beazer has denied that he intentionally evaded this, but this is not a particularly crucial matter.

The fact is that Beazer did in several ways and over a long period of time take steps to conceal his heroin usage.

It appears that Beazer's own personal situation came to such a critical pass in the spring of 1971 that he determined to enter the Veterans Administration methadone

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maintenance program. He did this somewhat reluctantly because he was afraid that this step would result in revealing his drug problem to the Transit Authority, but, nevertheless, he did go into the Veterans Administration methadone program.

Beazer's fears were justified. A medical report from the Veterans Administration was given to the Transit Authority in August of 1971 and this disclosed the drug problem to the Transit Authority.

Beazer was dismissed from the Transit Authority on Nove[illegible]er 26, 1971.

Beazer has had a really outstanding record of rehabilitation. He testified at the trial of this case about his vigorous efforts to keep employed since the time of his Transit Authority dismissal and he has risen to responsible supervisory positions in the building maintenance work and has done volunteer work of various kinds. So there is really no doubt in my mind about Beazer's rehabilitation, his present freedom from illecit drug use.

However, the Transit Authority report of July 19th finds that Beazer is not a satisfactory candidate for re-employment.

Two reasons are given. One is Beazer's

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violation of the anti-narcotic rule of the Transit Authority.

Second is alleged poor performance and attendance record at the Transit Authority.

Beazer contends that he should be reinstated as a towerman, in the alternative, that he should be reinstated in a non-critical position. Regarding the alternative, Beazer notes that persons in critical positions at the Transit Authority who are found to have alcoholic problems are switched to non-critical positions rather than being dismissed.

Beazer contends that he should be accorded the same treatment.

My ruling is that Beazer has no constitutional right to be reinstated as a towerman or in any other position. I base this ruling solely on Beazer's serious violation of the Transit Authority rule against narcotic usage in that Beazer was a heroin addict while occupying positions at the Transit Authority including critical positions of subway conductor and towerman.

It was clearly within the rights of the Transit Authority to forbid heroin usage and addiction by its employees. It is within the rights of the Transit Authority to impose sanctions for violations of those rules

and I am not prepared to rule that the Transit Authority is constitutionally forbidden from imposing a severe sanction, including a permanent bar from employment with the Transit Authority.

Moreover, I am ruling that the Transit Authority is not required to duplicate the treatment it gives to persons with alcoholic problems. I am holding that the Transit Authority is not constitutionally required to duplicate that treatment in the case of heroin addicts.

I believe that there is nothing in constitutional doctrine which would prevent the Transit Authority from making distinctions in the precise way that it handles narcotics addicts versus persons with alcchol problems.

The second person to be discussed, the second

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individual plaintiff is Reyes. Reyes started work at the Transit Authority in 1968 as a maintainer's helper, Group B, that is, a worker in masonry.

In 1970 he was promoted to ventilation and drainage maintainer.

Reyes was a heroin user starting in 1961. Thus, he was a heroin user when he first went to work with the Transit Authority and through the time of his employment with the Transit Authority until February 1971 when he enrolled in a methadone maintenance program at St. Clair's Hospital.

In late 1971 a medical examination by the Transit Authority revealed that Reyes was taking methadone and it was revealed that Reyes was a participant in a methadone maintenance program. Reyes was dismissed from the Transit Authority January 20, 1972.

The Transit Authority takes the position that Reyes is not entitled to re-employment for various reasons.

My ruling is that Reyes has no constitutional right to re-employment. The sole basis for this ruling, as in the case of Beazer, is that Reyes violated the Transit Authority's anti-narcotic rule in that he was using heroin and was addicted to heroin while employed by the Transit Authority.

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As in the case of Beazer I am ruling that the Transit Authority is not constitutionally barred from enforcing its anti-narcotic rule as to heroin users and heroin addicts and there is no constitutional bar against a severe sanction including a permanent bar from employment.

I realize that the nature of the positions held by Reyes are not strictly speaking classified as critical positions as they were in the case of Beazer. However, in the application of constitutional rulings I do not think that this is a material difference.

As I have stated and as the record shows the Transit Authority has given several reasons for holding Beazer and Reyes unemployable and, as I have stated, the only valid reason, in my view, is the fact of violation of the rule in that these men were addicted to heroin and using heroin while employed by the Transit Authority.

I asked counsel for the Transit Authority this morning what would be the Transit Authority's position in light of a Court ruling that the other factors besides the violation of the anti-heroin rule were not valid factors for excluding these men from employment and counsel answered that he was not in a position to answer the Court on that.

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So I would refine my ruling to this extent by saying that if the Transit Authority decides that the violation of the rule as to heroin usage is a reason why it wishes to exclude these men from re-employment in my view that would be a constitutionally valid reason.

The next individual to be discussed is the plaintiff Frazier. Frazier has never been employed by the Transit Authority. In February 1971 Frazier applied for position as a bus driver. The Transit Authority report of July 19, 1976 states that Frazier was rejected in 1971, because his driver's license had been suspended. The suspension was for failing to answer a traffic summons.

Frazier has testified that he did not know of the suspension of his driver's license at the time he applied to the Transit Authority. There is no record that he was notified of the suspension and I credit Frazier's testimony in this regard.

In applying for employment in the Transit Authority in 1971 Frazier checked "No" in response to a question whether he had ever been treated for narcotic addiction. Although the report implies that that answer was somehow false the Transit Authority has made it clear in court that they make no contention that there was any falsification in that answer, the fact being that

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Frazier had not been treated for narcotic addiction as of the time of that application.

It appears that Frazier began using heroin in 1968. In April 1971 he was convicted of attempting to possess less than one-eighth of an ounce of heroin. In October 1972 Frazier entered the methadone maintenance program of the Mary Scranton Foundation. Frazier applied in February 1973 again to the Transit Authority for the position of bus driver.

At this time he disclosed to the Transit Authority his participation in the methadone maintenance program. He was rejected because of the Transit Authority's rule about narcotics which applied to methadone, thus he was rejected because he was participating in the methadone treatment program.

In April 1973 Frazier applied to the Transit Authority for a position as bus cleaner. By this time Frazier was not only off heroin but he had completed successfully his participation in the methadone maintenance program and had terminated such participation in March 1973.

Nevertheless, the Transit Authority refused to hire him as a bus cleaner.

The Transit Authority still, as of 1976,

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takes the position that Frazier should not be employed in any position. I quote from the report of the Transit Authority dated July 19, 1976, but before I quote from this I should note that the Transit Authority gave him a medical examination in June 1976 and found no evidence of the use of narcotics. Indeed there is no indication whatever that Frazier has used illicit drugs at all in the past four years, that is since he entered the methadone maintenance program. There is no indication whatever that he has even taken methadone since the time that he left the methadone maintenance program in March 1973.

In other words, all the evidence before us indicates that he has successfully licked the narcotic problem and indeed that he has long since terminated even participation in the use of methadone.

Now the Transit Authority states in its July 19, 1976 report as follows:

"Although Mr. Frazier's recent screening for drug use showed negative and his clinical examination was unremarkable we consider the reasons for denying him employment in 1973 to be still valid today."

Also the Transit Authority in its July 19th report states that it has not received sufficient information about the Mary Scranton Foundation methadone program.

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I will treat the latter- point first.

The May Scranton Foundation program has ceased operation. However, the Transit Authority took the depositions of certain persons connected with the program. Also a letter from Seymour Joseph of the Drug Abuse Control Commission dated July 12 1976 which was written in response to an inquiry from the Transit Authority stated that the Scranton program was reviewed on a number of occasions and that nothing negative had been uncovered about the Scranton program. Indeed there is not the slightest bit of information presented to the Court, or to the Transit Authority, as far as the record shows, in any way negative regarding the Scranton program.

With regard to Frazier, as will be explained in a moment, I am considering Frazier solely with respect to employment as a car cleaner. This will be the framework of my remarks from here on out about Frazier.

As already described, the Transit Authority now takes the position that the reasons for denying Frazier employment in 1973 at the trial that the sole reason for refusing Frazier employment in 1973 was his participating in a methadone program and his prior heroin usage.

The Transit Authority is unwilling to give any effect to the indications of a further three-year history of drug freedom since 1973.

The Transit Authority's reasoning in now excluding Frazier from employment is precisely what I held to be unreasonable and unconstitutional in my August 5, 1975 opinion. There is no indication that Frazier lacks the physical or mental capability of being a car cleaner. Ther is not the slightest indication of a lack of proper work habits. There is no indication of any illicit drug use or even methadone use for a period of years.

I should note that Frazier does not present an instance, as in the cases of Beazer and Reyes, of a violatio of the Transit Authority's rule against heroin usage during employment by the Transit Authority. Frazier has never been employed by the Transit Authority.

But the Transit Authority in connection with his present employment brings up his prior conviction in connection with the one-eighth ounce of heroin, his false statement in a driver's license application, all apparently to indicate that he is of insufficient moral character to work as a car cleaner.

The driver's license application matter is that in connection with an application in January 1973 for a

driver's license it appears that Frazier falsely stated that he was never confined or treated for narcotic addition.

It is perfectly apparent that the sole reason why Frazier was rejected in 1973 as car cleaner and why the Transit Authority still seeks to reject him is his past history of methadone and heroin usage.

The Transit Authority is simply attempting, in my view, to resist the effect of the ruling which I made in my decision of August 5, 1975. In my view Frazier is precisely the kind of an individual clearly covered by my ruling of August 1975 and I find no rational reason for excluding Frazier from employment as a car cleaner and no indication of any realistic disability on the part of Frazier for that position.

Consequently, I am ruling that Frazier is entitled to employment as car cleaner. This is a non-critical position for which nothing in Frazier's background

(Continued on next page)

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or present circumstances should bar him.

Now I will return to the question of whether Frazier should be entitled to the other position which he once applied for, that of bus driver.

In my original opinion I indicated that the Transit Authority out of an abundance of caution might validly excuse past or present methadone maintained persons from employment in critical positions such as that of bus driver, subway motorman, towerman and so forth.

Therefore, I hold that the Transit Authority is not constitutionally obligated to employ Frazier as a bus driver. Again, I believe that out of an abundance of caution that the Transit Authority can constitutionally conclude that a critical position such as bus driver is such that a person who has been a heroin addict in recent years and a methadone patient in recent years should not be entitled to employment in such a position.

However, as I stated, I am ruling that Frazier is entitled to employment as a car cleaner and there is no valid reason to exclude him from that job.

I will return in a moment to the question of the exact remedy to be provided to Frazier.

Now I come to a discussion of the plaintiff

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Diaz. He has never been employed by the Transit Authority. He applied in 1970 to the Transit Authority for position as maintainer's helper Group D, that is a sheet metal worker.

At this time Diaz disclosed that he was in a methadone maintenance program of the Bernstein Institute of the Beth Israel Medical Center. Diaz had been a heroin user since 1950.

He entered the methadone maintenance program in December 1968. Dr. Trigg, who is the chief of methadone maintenance services of Beth Israel, has written a letter dated August 25, 1976 which has been admitted into evidence.

This letter states that Diaz was last given methadone by the program on October 27, 1975 and that prior to that time Diaz had been on a low dosage of methadone for some months.

In early November Diaz stated to the program that he did not think he needed methadone dosage any more. Diaz continued to visit the methadone clinic and to give urine samples for testing drug usage. He continued this until May 10, 1976.

There was never any evidence of drug usage following his completion of the methadone program or

qjw 10

completion of his methadone doses. Diaz was again examined at Beth Israel on July 27, 1976. At that time there was no evidence whatever of drug usage.

This is another case like the case of Frazier where we have clear evidence of a man who has licked the heroin habit and has indeed successfully gone through a methadone program and completed it.

At the present time there is no evidence whatever that he is taking any illicit drugs or even taking any methadone. Nevertheless, the Transit Authority in its July 19, 1976 report concludes that Diaz is not employable.

The report states that he is unemployable not only because of his narcotic history but under what the Transit Authority says are its general standards regarding suitability for Transit employment.

I can only conclude that the statement about Diaz' not complying with the Transit Authority's general standards is not made in good faith. There is no evidence whatever that Diaz lacks the incentive to work, lacks work habits, lacks the work skills required for sheetmetal work of the kind he applied for back in 1970.

The Transit Authority mentions a criminal

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conviction for possession of a hypodermic needle. The record now contains what appear to be the court records of two criminal proceedings against Diaz back in 1957 and 1958. The 1957 charge was dismissed. The 1958 charge was recorded as disorderly conduct, second degree, for which he was sentenced to two days in jail or a $5 fine.

These incidents obviously occurred while he was having his heroin problem. They are obviously ancient history which have no rational bearing on his present employment.

The Transit Authority says that Diaz has had four employers in the last two and a half years. If this is intended to indicate that Diaz is unreliable I draw the precise opposite conclusion from the strong weight of the evidence.

I noted in my earlier opinion that Diaz had a long record of stable employment. From 1962 to 1973 he was a sheetmetal worker employed by a single employer. He left this job because he was a union shop steward and there was some labor dispute.

In 1973 he did sheetmetal work for two other employers. He left the first one for higher wages and he left the second one because the employer relocated. Shortly thereafter he went to work for a bakery. The bakery

went out of business.

He states that he is now a trucker's helper.

During recent years at times of unemployment he collected Unemployment Insurance. In my view, Diaz shows initiative. He shows he has made strong attempts at keeping employed. There is no indication that he was ever fired for misconduct, ever fired for incompetence or ever fired for poor work habits.

The Transit Authority states in its July 19th report that the methadone maintenance program records are disturbing. I noted in my earlier opinion that questions had been raised about Diaz' performance in the methadone maintenance program. It was not appropriate in my earlier opinion to resolve these questions but I now do so.

The records relating to Diaz' participation in the program were introduced in evidence at the trial. In addition, two nurses who had observed Diaz testified at the trial and, further, the head of Diaz' program, Dr. Trigg, testified extensively at the trial, both on general matters and about Diaz.

What the problem boils down to is that there are some nurses notes indicating a suspicion of alcohol abuse in 1971, 1972 and 1973 while Diaz was on the program.

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The Transit Authority admits that except for one minor lapse there was no reversion to heroin usage at any time after Diaz entered the methadone maintenance program. So we are dealing with a question about alcohol.

It was quite apparent from the evidence at the trial that Diaz, when he appeared at the methadone maintenance clinic, was under scrutiny far greater than is usually given almost any other human being in normal walks of life.

When a patient appears at the methadone clinic he is observed by at least one nurse who obviously looks at him with the most careful scrutiny to see any slight indication of anything that could conceivably be wrong with him. His breath is smelled, his eyes are looked at, et cetera, et cetera.

One nurse made some sporadic notes about suspicions of drinking. She observed on a few occasions some red eyes or something similar to that. However, she has testified that she was never under the impression that Diaz was a problem drinker. These notes were obviously made out of an abundance of caution. The problem was never considered even serious enough to refer Diaz to the procedures that are applied to people with a drinking

problem in the methadone program.

The nurse who made these notes has testified she never saw Diaz intoxicated. A liver profile was done on January 30th, 1975 in connection with this case and that revealed no indication of problem drinking.

Another nurse who observed Diaz at the methadone program testified in this case and testified that she never saw any indication at all of alcohol abuse or alcohol problems.

I conclude that although Diaz may drink occasionally, as undoubtedly thousands of Transit employees do, there is no evidence whatever that he has had in the past or now has a drinking problem.

I am convinced that this situation which I have just described is not a rational reason for excluding Diaz from employment.

The Transit Authority complains that it has not been able to get the records about Diaz. I simply do not comprehend this statement because the records about Diaz were examined extensively at the trial.

The Transit Authority complains in its July 19th report that it has not been able to obtain a sufficient evaluation of the Beth Israel Program from Dr. Joseph, head of the State Drug Abuse Control program.

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It is true that subsequent to my May 10, 1976 injunction the Transit Authority addressed some questions to Dr. Joseph about his evaluation and requesting certain information about various programs including Beth Israel.

This resulted in an exchange of correspondence. I will simply cut the matter short by saying that I do not comprehend the slightest necessity in this rather formalistic inquiry to Dr. Joseph about the Beth Israel program.

It does nothing but encumber the record. The Beth Israel program was conceded at the trial by all hands to be utterly reliable and virtually a model program.

In any event, the main focus is Diaz and the record demonstrates no rational reason for excluding Diaz from a position as maintainer's helper Groud D doing sheetmetal work and I hold that he is entitled to be hired in that position.

I will return in a moment to the specific remedy. I should deal now with the class member, Nathanial Wright. Without going into detail, this is a situation of a man who has the same problem as I have pointed out in the cases of Beazer and Reyes, that is he was a user of heroin while employed with the Transit Authority and

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therefore a violator of that rule in respect to heroin and, consequently, if the Transit Authority desires to bar him from employment I cannot hold that that is an unconstitutional or irrational act.

The relief to be given to Diaz and Frazier is as follows. I will exclude for the moment the question of back pay. I am ruling that Frazier and Diaz are to be offered and are to be instated in the jobs I have just described as soon as openings in these jobs occur and if there is any problem in this regard or any other problem at all in connection with the enforcement of the Court's order I am prepared to monitor the handling of those mechanics.

The application of the practice of the Transit Authority selecting one out of three top people on a list will not be followed in the case of Diaz and Frazier. They are to be offered the first available position of the kind I have indicated.

As to plaintiffs Beazer, Reyes, and as to class member Wright, the action is to be dismissed.

We come to the question of relief to other class members besides the ones specifically dealt with. The Transit Authority has provided a list of persons who were either terminated from employment or whose applications

for new employment were denied because of narcotics problems. This list goes back a period of years. I am simply holding now that my order of May 10, 1976 is to be amended to provide that a notice of my ruling in this action is to be mailed to appropriate persons on the Transit Authority list and those persons are to be told of the results of this action and are to be advised that they can communicate with counsel for the class if they seek any relief. The exact form of the notice and the exact list of persons to which this notice will be addressed will be approved by the Court. The Court will then be advised of those persons responding to the notice who now seek Transit Authority employment. Subject to court review, as in the cases of Bezzer et al. The Transit Authority will reconsider their employability.

The application has also been made that the order provide for newspaper notice and for notice to be posted in methadone clinics or other facilities. I am dening the application for newspaper notice.

As far as notice to be placed in methadone clinics or other facilities, those clinics or facilities are obviously at liberty to post a notice or do anything else they wish to do to advise persons of the Court's ruling. The Court's ruling is a public matter.

The only caution is that the participation of plaintiffs' counsel in such a procedure should be such as to not violate any ethical code about solicitation of workand I am sure that would be no problem about that.

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Basically what I am saying is that that is just a matter of freedom of speech. The clinics can post any notice they wish. It's really up to them.

I am denying all applications to amend the May 10th order except with respect to the notice provisions which I have just outlined and also I am leaving open, of course, the question of back pay which will be covered next week.

Now I think the last item to be dealt with today is the application for counsels' fees. It is clear from the authorities that plaintiff's counsels are entitled to an award covering fees and disbursements. They are entitled to this both with respect to the recovery they have won under Section 1983 and under Title 7.

Without going into detail, they are entitled to such an award under the 1976 statute and also under the other applicable cases and statutes. All of these have been briefed thoroughly and I won't attempt to lay them out here. The matter, in my view, is obvious.

The real question is as to the amount to be awarded. The rule has been set forth clearly both in legislative history of the 1976 statute and also in the case law to the effect that counsel, such as plaintiffs'

qjw 18

counsel in this case, are entitled to full compensation for the time reasonably spent on the litigation at normal attorneys rates for the type of work and the level of expertise involved and that the Court should also consider in the case of a successful litigation an award of a premium which takes into account the contingent and risky nature of the work often done in cases such as the present one.

In other words, the rule basically is that the same type of standards apply here as apply in the commercial field where awards of counsel fees are made to plaintiff's counsel in class actions and in derivative actions. No serious challenge has been made to the presentation of evidence about the amount of time spent by plaintiffs' attorneys in this litigation.

The only exception is a rather vague suggestion that perhaps the preparation was somewhat exaggerated in connection with the amount of work required and also the suggestion that perhaps there was duplicate staffing.

I am not prepared to so criticize the efforts of plaintiffs attorneys. This was a difficult case. It required a great deal of factual and legal research and technological research for its proper

presentation.

It would be difficult to say that plaintiffs' lawyers should have done it some other way or some cheaper way.

I will not set forth in detail the number of hours spent by various people for what purpose. This is all laid out in thorough detail in the application.

I also find that the suggestion of a rate of $100 per hour for the head of the team, Ms. DuBois, and the rate of $60 per hour for her assistants, Mr. Morrill and Mr. Balber, I find that these rates are really conservative considering the talent displayed and what I believe is the rate charged by other experienced lawyers in this city.

There is also a slight amount of time from another attorney, a professor at Columbia, billed at $110 an hour. I do not challenge that either.

(Continued on next page)

qjw 20

The total time charge on the basis of hours spent and these rates amounts to about $310,000. I have taken out the amount of the paralegals. I have serious question about whether that can be included but this is not a large amount. We are dealing with a basic charge of $310,000.

The only remaining question is what premium, if any, should be allowed beyond that. This is largely a matter of discretion. There is no magic figure. I reject the idea that the Court should automatically deal in multipliers of two and three. I think that that gets us into some very extravagant calculations.

I believe under all the circumstances, and I will not try to enumerate all of them, but I believe that the premium should be modest. I have in mind the financial condition of the Transit Authority.

I also have in mind that the amount of the fee is inevitably large and the number of people who will be actually affected and benefited by this work is somewhat questionable.

I do not say or make the latter point to take away from the value of this litigation because it undoubtedly has an effect upon the law generally if it stands. It will have a broad effect beyond just Mr.

qjw 21

Frazier and Mr. Diaz and what other class members will benefit here.

As far as the other class members there are indications in the recent affidavit of Mr. Balber that there may be substantial numbers who are equally deserving of relief with Mr. Diaz and Mr. Frazier. But all in all I believe that the premium should be modest and I am awarding a fee of $375,000.

There has been an application made for disbursements of $14,290. This includes for instance $4,000 in xerox costs. I am simply saying that whatever disbursements were incurred will have to be absorbed in the fee of $375,000.

That concludes the proceedings now. I need to depart and if you can set a time with my clerk for whatever we need to do about the back pay issue I am at your disposal whenever it can be arranged with my clerk.

CURRICULUM VITAE

NAME, DATE OF BIRTH

Robert L. DuPont, M.D.
March 25, 1936 (Toledo, Ohio)

CURRENT FULL TIME POSITIONS

Director, Special Action Office for Drug Abuse Prevention
Executive Office of the President
726 Jackson Place, N.W.
Washington, D.C. 20500
(202) 456-6620

Director, National Institute on Drug Abuse
Department of Health, Education and Welfare
5600 Fishers Lane
Rockville, Maryland 20852
(301) 443-6565

EDUCATION

June 1954 -- Graduated from East Denver High School
June 1958 -- B.A., Emory University, Atlanta, Georgia
June 1963 -- M.D., Harvard Medical School, Boston, Massachusetts

POST-GRADUATE TRAINING

1963 - 1964 - Medical Intern
Cleveland Metropolitan General Hospital
Western Reserve Medical School
Cleveland, Ohio

1964 - 1966 - Psychiatric Resident and Teaching Fellow in Psychiatry
Massachusetts Mental Health Center
Harvard Medical School
Boston, Massachusetts

1966 - 1968 - Clinical Associate
Laboratory of Clinical Sciences
National Institute of Mental Health
Bethesda, Maryland

BRIEF CHRONOLOGY OF EMPLOYMENT

1959 - (2 months)	-- Epidemiology Trainee California Department of Public Health Berkeley, California
1961 - (3 months)	-- Research Assistant, Tuberculosis Laboratory, Communicable Disease Center Atlanta, Georgia
1964 - 1965	-- Psychiatrist Washington Hospital Jamaica Plains, Massachusetts (part time position)
1965 - 1966	-- Senior Psychiatrist Massachusetts Department of Corrections Norfolk Prison Norfolk, Massachusetts (part time position)
1968 - 1970	-- Research Psychiatrist and Acting Associate Director for Community Services District of Columbia Department of Corrections Washington, D.C.
1970 - 1973	-- Administrator, Narcotics Treatment Administration Department of Human Resources Government of the District of Columbia Washington, D.C.

CONSULTANTSHIPS AND BOARD MEMBERSHIPS

1967 - 1968	-- Consultant on Research and Development District of Columbia Department of Corrections Washington, D.C.

1968 - 1971	-- Consultant, Child Research Branch National Institute of Mental Health Bethesda, Maryland
1971 - 1972	-- Consultant, American Bar Association, Special Committee on Crime Prevention and Control Washington, D.C.
1971 - 1972	-- Member, The Armed Forces Epidemiological Board, Committee on Drug Abuse Washington, D.C.
1971 - 1973	-- Consultant to the Food and Drug Administration Bureau of Drugs Rockville, Maryland
1971 - 1973	-- Member, Board of Directors, Center for Correctional Justice Washington, D.C.
1971 - 1973	-- Consultant to the Special Action Office for Drug Abuse Prevention The White House Washington, D.C.
1971 - 1973	-- Consultant, Veterans Administration Washington, D.C.
1972 - 1973	-- Member, National Advisory Council on Drug Abuse Prevention A Presidential Appointment Washington, D.C.
1972 - 1973	-- Member, Drug Abuse Task Force, National Advisory Commission on Criminal Justice Standards and Goals Department of Justice Washington, D.C.
1972 - Present	-- Member, Washington Junior League Advisory Committee Washington, D.C.

1972 - Present -- Member, Board of Directors Washington Society for the Performing Arts

HONORS

1971 - 1972 -- Melvin C. Hazen Award to the Outstanding Young Man in the District of Columbia Government (presented by the Downtown Jaycees)

1973 -- Meritorious Service Award, District of Columbia Government

MILITARY SERVICE

1966 - 1968 -- Surgeon (Major), U.S. Public Health Service, National Institute of Mental Health, Bethesda, Maryland

SOCIETIES

District of Columbia Medical Society
Washington Psychiatric Society
Washington Area Council on Alcoholism and Drug Abuse
American Psychiatric Association
American Correctional Association
National Council on Crime and Delinquency
Medical Corrective Association
American Academy of Psychiatry and Law
American Public Health Association
Pan American Medical Association

MEDICAL LICENSE

District of Columbia
Maryland
Massachusetts
California

CERTIFICATION

Certified in Psychiatry by the American Board of Psychiatry and Nuerology, 1970.

FACULTY APPOINTMENTS

1964 - 1966	-- Teaching Fellow in Psychiatry, Harvard Medical School
1970 - 1972	-- Assistant Clinical Professor of Psychiatry, George Washington University Medical School
1972 - Present	-- Associate Clinical Professor of Psychiatry and Behavioral Sciences, George Washington Medical School

PROFESSIONAL PUBLICATIONS

DuPont, RL and Gruenbaum, HU: "Willing Victims: The Husbands of Paranoid Women", American Journal of Psychiatry (presented at the American Psychiatric Association Annual Meeting in Detroit, May 11, 1967) 125:150-159, 1968

DuPont, RL: "The Impact of Psychosis on Marriage", (presented to the American Psychological Association Annual Meeting in San Francisco, September 3, 1968)

DuPont, RL: "Individual Psychotherapy", Correctional Handbook, Federal Bureau of Prisons Publication, 1970

Brown, BS, Markman, EM and DuPont, RL: "Release Offenders' Perceptions of Community and Institutions", Corrective Psychiatry and Journal of Social Therapy 16:88-96, 1971

Brown, BS, DuPont, RL, Kozel, NJ and Spevacek, JD: "Staff: Inmate Conflict Regarding Views of Inmate Functioning", Social Psychiatry 6:83-88, 1971

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DuPont, RL and Katon, RN: "Urban Crime and the Rapid Development of a Large Heroin Addiction Treatment Program", Journal of the American Medical Association, 216:1320-1324, 1971

DuPont, RL: "Profile of a Heroin Addiction Epidemic and an Initial Treatment Response", New England Journal of Medicine 285:320-324, 1971

DuPont, RL: "How Corrections Can Beat the High Cost of Heroin Addiction", Federal Probation 35:43-50, 1971

DuPont, RL: "Individual Psychotherapy in Prisons", Narcotics Treatment Administration, 1971

DuPont, RL and Katon, RN: "Physicians and the Heroin Addiction Epidemic", Modern Medicine, pages 123-139, 1971

DuPont, RL: "Methadone Maintenance", Hospital and Community Psychiatry, (a book review) 22:322-323, 1971

DuPont, RL and Piemme, TE: "Evolution of an Urban Heroin Epidemic and Influence of Drug Treatment Program", Clinical Research, 29:573, 1971

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Brown, BS, DuPont, RL, Kozel, NJ and Spevacek, JD: "Staff Conceptions of Inmate Characteristics", Criminology, 9:316-329, 1971

Brown, BS, DuPont, RL and Nolfi, RJ: A Re-examination of the Use of Illicit Drugs by Methadone Maintenance Patients, Proceedings of the Fourth National Conference on Methadone Treatment (National Association for the Prevention of Addiction to Narcotics) New York, 1972

Brown, BS, DuPont, RL and Glendinning, ST: "Narcotics Treatment and Behavioral Change", Proceedings of the Fourth National Conference on Methadone Treatment (National Association for the Prevention of Addiction to Narcotics) New York, 1972

Katon, RA, DuPont, RL and Rubenstein, RM: "Methadone Detoxificaction of Heroin Addicts, Proceedings of the Fourth National Conference on Methadone Treatment (National Association for the Prevention of Addiction to Narcotics) New York, 1972

Lloyd, RN, Katon, RN, DuPont, RL and Glendinning, ST: "Evolution of a Treatment Approach for Young Heroin Addicts; Comparison of Three Treatment Modalities", Proceedings of the Fourth National Conference on Methadone Treatment, (National Association for the Prevention of Addiction to Narcotics) New York, 1972

Webster, JB, Katon, RN and DuPont, RL: "Multi-Phasic Screening of Inner-City Heroin Users Revealing Some of the Social, Physical and Chemical Characteristics of this Population", Proceedings of the Fourth National Conference on Methadone (National Association for the Prevention of Addiction to Narcotics) New York, 1972

DuPont, RL: "Heroin Addiction Treatment and Crime Reduction", American Journal of Psychiatry, (presented to the American Psychiatric Association, Washington, D.C., May 6, 1971), 128:856-860, 1972

DuPont, RL: "The District of Columbia Experience Treating Heroin Addicts", Public Management, 54:7-10, 1972

DuPont, RL: "Treating Heroin Addicts in Washington", Delaware Medical Journal, 44:35-37, 1972

Brown, BS, DuPont, RL, Bass III, UF, Glendinning, ST, Kozen, NJ and Meyers, MB: "Impact of a Multi-Modality Treatment Program for Heroin Addicts", Comprehensive Psychiatry, 13:391-397, 1972

DuPont, RL: "Heroin Epidemic: Progress Report", New England Journal of Medicine, (a letter to the Editor) 287:1154, 1972

DuPont, RL: "The Treatment of Heroin Addicts: An Historical and Personal Review", Career Directions, 3:12-25, 1972

Kozel, NJ, DuPont, RL and Brown, BS; "Narcotics and Crime: A Study of Narcotic Involvement in an Offender Population", International Journal of Addictions, 8:443-450, 1972

Sherwood, GK, McGinnes, MH, Katon, RN, DuPont, RL and Webster, JB: "Negative Direct Coombs Tests in Narcotic Addicts Receiving Maintenance Doses of Methadone", Blood, 40:902-904, 1972

Bass, UF, Brown, BS and DuPont, RL: "The Use of Heroin by an Offender Population - A Report Over Time", Corrective Psychiatry, 18:24-30, 1972

Brown, BS, DuPont, RL and Kozel, NJ: "Heroin Addiction in the City of Washington", Drug Forum, 2:187-190, 1972

DuPont, RL: "How to Identify a Heroin Problem", Justice, 1:10-12, 1972

DuPont, RL: "Coming to Grips with an Urban Heroin Addiction Epidemic", Journal of the American Medical Association, 223:46-48, 1972

DuPont, RL and Greene, MH: "Heroin Addiction - Light at the End of the Tunnel", (presented at the annual meeting of the American Psychiatric Association, May, 1972)

Brown, BS, Kozel, NJ, Meyers, MB, and DuPont, RL: "Use of Alcohol by Addict and Non-Addict Populations", American Journal of Psychiatry, 130:599-601, 1972

DuPont, RL and Greene, MH: "Patterns of Heroin Addiction in the District of Columbia", Proceedings of the Fifth National Conference on Methadone Treatment (National Association for the Prevention of Addiction to Narcotics) New York, 1973

DuPont, RL: "Where Does One Run When He's Already in the Promised Land", Proceedings of the Fifth National Conference on Methadone Treatment (National Association for the Prevention of Addiction to Narcotics) New York, 1973

Perpich J and DuPont, RL: "Criminal Justice and Voluntary Patients in Treatment for Heroin Addiction", Proceedings of the Fifth National Conference on Methadone Treatment , (National Association for the Prevention of Addiction to Narcotics) New York, 1973

Greene, MH, Luke, J, DuPont, RL: "Acute Opiate Overdose: A Preliminary Report on Mechanisms by Death", Proceedings of the Fifth National Conference on Methadone Treatment, (National Association for the Prevention of Addiction to Narcotics) New York, 1973

Greene, MH and DuPont, RL: "Methadone Related Mortality", Proceedings of the Fifth National Conference on Methadone Treatment (National Association for the Prevention of Addiction to Narcotics) New York, 1973

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Cochran, DA and DuPont, RL: "A Statistical History of the Narcotics Treatment Administration", Proceedings of the Fifth National Conference on Methadone Treatment, (National Association for the Prevention of Addiction to Narcotics) New York, 1973

DuPont, RL and Piemme, TE: "Estimation of the Number of Addicts in an Urban Area", Medical Annals of the District of Columbia, 42:323-326, 1973

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DuPont, RL and Greene, MH: "Monitoring a Heroin Addiction Epidemic - The Decline of Heroin Abuse in Washington, D.C., Science, 181:716-722, 1973

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Lloyd, RA, Katon RN and DuPont, RL: "Evaluation of a Treatment Approach for Young Heroin Addicts", International Journal of the Addictions, 9(2): 229-239, 1974

Greene, MH, Turner, N and DuPont, RL: "Amphetamines in the District of Columbia III - Patterns of Abuse in a Population of Heroin Addicts in Treatment", International Journal of the Addictions, 9(5): 1974

Greene, MH, Luke, JL and DuPont, RL: "Opiate Overdose Deaths in the District of Columbia I: Heroin Related Fatalities" Medical Annals of the District of Columbia, 43: 175-181, 1974

Greene, MH and DuPont RL: "Heroin Addiction Trends", American Journal of Psychiatry, 131: 545-550, 1974

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DuPont, RL: "Overview of Drug Abuse", Proceedings of the National Drug Abuse Conference, Chicago, March 1974

Greene MH, Brown BS and DuPont RL: "The Abuse of Illicit Methadone" Proceedings of the National Drug Abuse Conference, Chicago, March 1974

Greene, MH and DuPont RL: "Heroin Use-A Communicable Disease", Proceedings of the 36th Annual Meeting of the National Research Council Committee on Problems of Drug Dependence, Mexico City, March 1974

DuPont, RL: "The Future of the Federal Drug Abuse Program", Proceedings of the 36th Annual Meeting of the National Research Council Committee on Problems of Drug Dependence, Mexico City, March 1974

Greene MH and DuPont RL: "The Treatment of Acute Heroin Toxicity", A Treatment Manual for Acute Drug Abuse Emergencies, National Clearinghouse for Drug Abuse Information, Peter Bourne, editor

DuPont, RL: "Drug Abuse In the United States: Possible Implications for Nigeria"

Katon, RH, Lloyd, RA and DuPont, RL: "Methadone Detoxification of Heroin Addicts, Drug Forum, in press

DuPont, RL and Greene, MH: "Beginning to Dissect a Heroin Addiction Epidemic", Heroin Addiction Treatment, edited by Peter Bourne, in press

DuPont, RL: "Heroin Addiction Treatment", Psychiatry (a book review) in press

Greene, MH and DuPont, RL: "The Treatment of Acute Heroin Toxicity", Handbook of Drug Abuse Emergencies, to be published by the American Psychiatric Association

DuPont, RL: "Methadone, Experiences and Issues" (a book review) Federal Probation, in press

DuPont, RL, "The Evolving Federal Substance Abuse Organization", The American Journal of Drugs and Alcohol Abuse, in press

Greene, MH and DuPont, RL: "Epidemic of Heroin Abuse", American Journal of Public Health (Supplement), in press

Greene, MH, Luke, JL and DuPont, RL: "Opiate Overdose Deaths in the District of Columbia: Methadone Related Fatralities", Journal of Forensic Science, in press, July 1974

Brown, BS, Glendinning ST, and DuPont RL: "Instances of Treatment for Opiate and Non-Opiate Drugs in One Urban Community", International Journal of the Addictions, in press

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Wilson, JQ and DuPont, RL: "The Sick Sixties", The Atlantic Monthly October, 1973

DuPont, RL: "A New Look In Drug Abuse Education", Los Angeles Times, January 25, 1974

DuPont, RL: "A Modern Epidemic Confirms Some Old Public Health Experiences," Natural History, June-July, 1974

MEP

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER et al., Plaintiffs,	:	
versus	:	72 Civil 5307
NEW YORK CITY TRANSIT AUTHORITY, Defendants.	:	

New York, N. Y.

October 22, 1974 - 10:30 a.m.

Before

HON. THOMAS P. GRIESA,

District Judge.

APPEARANCES:

HARLON L. DALTON, Esq.,
ERIC D. BALBER, Esq.,
MARK C. MORRILL, Esq.,
ELIZABETH B. DuBOIS, Esq., and
MICHAEL MELTSNER, Esq.,
Attorneys for Plaintiffs

JOHN G. deROOS, Esq.,
Attorney for Transit defendants
EDWARD W. SUMMERS, Esq., and
GILBERT T. DUNN, Esq., of Counsel

A. MICHAEL WEBER, Esq.,
Assistant Corporation Counsel, for Civil Service Commission

WILLIAM A. ROSKIN, Esq.,
Department of Personnel, Civil Service Commission

* * *

ROBERT LEWIS DuPONT, JR., Called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BALBER:

Q Dr. DuPont, could you briefly describe your professional training, please.

A Yes. I graduated from college in 1958 from Emory University. In 1963 I graduated from the Harvard Medical School. In the following year, I took a medical internship at Western Reserve in Cleveland, and I returned to Harvard for my residency training in psychiatry. In 1966 I came to the National Institutes of Health as a clinical associate, where I stayed until 1968. At that point, I joined the District of Columbia Department of Corrections as a research psychiatrist and as director of community services, and I

remained at that position until 1970, when I became the first director of the Narcotics Treatment Administration of the District of Columbia government.

I might as well pursue quickly --

Q What positions of employment do you currently hold?

A In June of 1973 I was appointed to the position of director of the Special Action Office for Drug Abuse Prevention in the Executive Office of the President, and I have held that position continuously since that time, and I currently hold it.

In September of 1973 I simultaneously became the director of the National Institute on Drug Abuse in the Department of Health, Education and Welfare.

Q If we can backtrack for a minute, what were the functions of the Narcotics Treatment Administration in the District of Columbia when you served as director of that?

A Well, prior to the formation of the Narcotics Treatment Administration, there were two pilot programs in the District of Columbia for the treatment of heroin addicts. I was in charge of one of them. It was part of the Department of Corrections.

Then the Narcotics Treatment Administration was created to conduct an oversee all heroin addiction treatment in the District of Columbia in 1970, and that was the function of the organization.

MEP DuPont - direct 5

Q And what proportion of participants in the Narcotics Treatment Administration's program were maintained on methadone?

A The Narcotics Treatment Administration between 1970 and 1973 treated fifteen thousand people for heroin addiction.

THE COURT: You are speaking a little too fast for me. I am trying to get some notes.

Now, what is the name of the institution?

THE WITNESS: It is called the Narcotics Treatment Administration.

THE COURT: Of the District of Columbia?

THE WITNESS: Of the District of Columbia, a City Government agency.

THE COURT: And you started to give us some statistics.

THE WITNESS: Yes. Between 1970 and 1973, fifteen thousand people were treated for heroin addiction by that agency. Eighty per cent of them received methadone as part of their treatment. About thirty per cent chose methadone maintenance, and about fifty per cent chose detoxification courses of methadone treatment, and twenty per cent entered drug-free programs.

THE COURT: I just can't follow you. I am trying to get notes. You will have to speak slowly.

You say eighty received methadone? Eighty per cent?

THE WITNESS: Yes.

THE COURT: Thirty per cent chose methadone maintenance?

THE WITNESS: Yes. And fifty per cent method of detoxification.

THE COURT: Fifty per cent chose what?

THE WITNESS: Detoxification, which is a gradually decreasing dose of methadone, leading to drug-free condition.

THE COURT: Now, when you say the thirty per cent -- I see. Thirty per cent and fifty per cent adding up to that eighty per cent.

THE WITNESS: Right. And then twenty per cent were drug-free referrals.

THE COURT: All right.

Q Dr. DuPont, would you describe briefly what your duties are as director of the Special Action Office and director of the Drug Institute?

A To oversee the entire Federal Drug Abuse activity on the treatment-rehabilitation side. The basic structure of the Federal response to drug abuse is to divide into two parts: the so-called demand side and the supply side.

The demand side includes treatment, rehabilitation, prevention and research activities, and the supply side is

the law enforcement and international activities, devoted to inhibiting the supply of illicit drugs.

Mr. John Bartels, head of the Drug Enforcement Administration, takes the lead on the supply side.

THE COURT: What is the name of your agency?

THE WITNESS: The Special Action Office for Drug Abuse Prevention.

THE COURT: That is under the HEW?

THE WITNESS: No. That is part of the Executive Office of the President. This is a presidential appointment, confirmed by the Senate, and it is a level --

THE COURT: And you are what in that office?

THE WITNESS: I am the director.

THE COURT: You are the director, so you are the head of it?

THE WITNESS: That's right.

THE COURT: How long have you had that office?

THE WITNESS: What is it? It must be fifteen or sixteen months.

am

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a.m.

jblt 1 DuPont-direct

MR. BALBER: Your Honor, if I may, I have a copy of DuPont's curriculum vitae, which might help avoid confusion, and I would like to mark it as a plaintiff's exhibit and enter it in the record.

THE COURT: All right.

(Plaintiff's Exhibit 30, marked for identification.)

MR. BALBER: I would like it admitted into evidence.

THE COURT: Any objection?

Is this something you have made up? This Exhibit 30? A sheet that you have put down?

THE WITNESS: This is my regular curriculum vitae that I give out when people are interested in my background.

THE COURT: And this describes your background accurately?

THE WITNESS: Yes, it does.

THE COURT: I'll receive it. Let's not spend any more time on it.

(Plaintiff's Exhibit 30, received in evidence.)

Q Are you engaged in any teaching activities?

A Yes. I am on the teaching faculty of the George Washington Medical School as an associate clinical professor.

Q Have you published any articles in the field of drug abuse?

A Yes, I have published, I am not sure of the current number, about 40 or 50 articles in the field of drug abuse.

Q I believe those are indicated on the curriculum.

MR. BALBER: Your Honor, I submit that Dr. DuPont is obviously qualified as an expert in the field of drug abuse treatment and methadone maintenance and I request that he be accepted as such.

THE COURT: We don't have any objection to him testifying.

Q Doctor, would you please describe the origins of methadone maintenance treatment as it is practiced today and what that treatment generally entails?

A Yes. The origins go back to the 1950s when, in New York City in particular, when there was great pessimism about the treatment of heroin addiction.

A researcher in New York City named Vincent Dole was doing research on obesity and came to the conclusion that some of his work with respect to the appetite in obesity, the difficulty of controlling obesity, might have some applicability in heroin addiction.

Accordingly, he started research in 1962 and asked a psychiatrist to join him in that research, by the name of Dr. Marie Nyswander.

These two individuals admitted to the Rockefeller

Institute two patients to study them in terms of the metabolism of heroin addiction and they began by giving them morphine which is what researchers generally use instead of heroin because heroin is not available for easy research in the U.S. but morphine is essentially identical in terms of the pharmachologic effects.

What they observed is that these individuals increased their does or morphine and were preoccupied with the drug-taking behavior needing to inject it four or five times a day, every day, to avoid withdrawal symptoms.

THE COURT: Are you saying that Dr. Nyswander and Dr. Dole worked together observing these two patients at the Rockefeller Institute?

THE WITNESS: Yes, sir.

THE COURT: Okay.

A They became addicted to morphine. They had been addicted, for eight years prior to their admission, to heroin and then they were admitted. This is a fairly conventional medical research technique for studying a disease, to admit people who are suffering from the disease to a research ward and to study the metabolism and various factors associated with the disease process and that's what was done.

THE COURT: They were put on morphine in the

Institute?

THE WITNESS: Yes, sir. They were switched essentially from heroin to morphine and allowed to inject it and the study was done of the effects of this.

At that time, methadone was used as a detoxification agent, routinely, beginning in the early 1950s, the conventional treatment, medical treatment for the withdrawal from heroin addiction or any opiate addiction was oral doses of methadone gradually reduced over a 3 to 10 day period in a hospital setting so, Dole and Nyswander began then to detoxify or reduce the dose of methadone, having switched them from morphine to methadone and decided to carry on their research into the metabolic reactivity of methadone as they had with morphine and so instead of reducing the dose, they let the dose stay at a constant level which was sufficient to keep the individuals from feeling sick.

Now, that required them to take the methadone orally once a day as opposed to injecting the morphine or heroin sever times a day.

They were surprised to observe at that point, because this was not their intention in the experiment, to observe that in fact these people stopped being preoccupied with drug-taking and became interested in a variety of other activities, including painting and school activities.

So they released both the patients during the day to go to school. And the fundamental observation was made, that was in 1964, in New York City, at the Rockefeller Institute, on these two patients and the observation was that when they were give oral doses of methadone at a steady level, they ceased being preoccupied with the taking of illicit drugs and particularly with heroin and pursued their lives in a more conventional and obviously socially acceptable fashion.

Now, the history of methadone from that point until roughly 1972, really, was a history of rapidly increasing extent of the treatment initially uuder research auspices but later as a general treatment for heroin addiction and the repeated experience was to confirm the basic observation that individuals who were so maintained were able to pursue their lives in a normal fashion. There was a period of considerable ambiguity with respect to federal regulations of this activity beginning back in 1964 which culminated in the establishment by the Food and Drug Administration of regulations, federal regulations, for methadone programs, that were issued in December of 1972 and into effect in March of 1973, which really clarified the status of methadone from the federal perspective and established it as a legitimate medical treatment technique which is its status to this

day.

Q Dr. DuPont, can you describe what the methadone maintenance treatment generally entails today for the individual? What the process is by which one is maintained?

A Initially in the Dole-Nyswander experiment, the patients were admitted to the hospital for 6 weeks. In about 1970 that was stopped and the so called induction went on in an out patient basis thereafter.

First of all, methadone treatment is only appropriate for people who are addicted to heroin. It is not a general drug abuse treatment but a specific treatment for heroin addiction.

It is specifically not to be used for people who have used heroin for less than two years, so it is chronic heroin addiction that is being treated.

An individual who meets that criteria and who volunteers for methadone maintenance, because in all cases it must be voluntary, then comes into a clinic and is induced and what that means is he takes oral doses of methadone once a day, generally starting at a dose level of around 20 or 30 milligrams a day, and over the course of several weeks the dose is typically increased to a level initially at about 100 milligrams but now generally around the country around --

* * *

MR. BALBER: Why don't we take it a little more slowly, step by step.

Q Why don't we start with the description of what methadone maintenance treatment entials today for the individual and how it is practiced.

A From the point of view of the patient it involves him coming to the clinic on a daily basis, taking an oral dose of methadone and participating in a counselling and rehabilitation program that is structured at the clinic.

Q How often does the patient take the methadone?

A Once a day.

THE COURT: What does he do at the clinic once a day? Gets an oral dose?

THE WITNESS: That's right.

THE COURT: What else?

THE WITNESS: He meets with his counselor and works on the psychological and social problems that the person has. Typically, the untreated addict does not have a job and has a very chaotic personal life so that the treatment

experience is working with the patient, putting his life back together and that as you can imagine takes time and effort on both parties.

THE COURT: What kind of people act as counselors?

THE WITNESS: These are generally, first of all, they are trained. They are generally not professional in the sense of being psychologists, psychiatrists or social workers. Many of them are former addicts themselves but not all. And there is considerable variation from one program to another about the specific credentials associated with counseling, but in any event, they are people who have been trained in counseling and who have demonstrated an aptitude for working with this particular kind of client and a typical caseload for a counselor would be about 20 clients in a caseload that he would work with.

Q In addition to the routine counseling you just described, are other rehabilitative services made available to the client?

A In addition, there are medical services provided. Methadone being a medical treatment program, each methadone program must have a physician associated with it to provide basic medical services and the most important other service that is provided is in the vocational rehabilitation area where the individual is counseled by his employment background

and employment prospects and encouraged to get a job.

Q Are participants in methadone maintenace programs monitored for continued drug abuse?

A Yes, they are.

The Federal Food and Drug Administration requires weekly urine tests for continued heroin use and monthly tests for other drug use but most programs actually monitor the urine more often than that.

Q Are clinic staffs trained at all in detecting drug abuse on a clinical level?

A Yes, they are quite familiar with detecting the signs of relapse to illicit drug use although I must say that even well trained people can be fooled and that's why the urine testing is important also.

THE COURT: What are the monthly tests?

THE WITNESS: They include barbituates and amphetamines as well as tests for heroin.

THE COURT: The urine tests detect heroin only?

THE WITNESS: Weekly. The ones that are required. I have given you what the Food and Drug Administration requires. Most programs actually test more often than that.

THE COURT: But I am saying that the urine test will detect heroin only?

THE WITNESS: No. It will also detect barbituates

and amphetamines.

THE COURT: What is the monthly test?

THE WITNESS: The lowest level that is required by the Food and Drug Administration is weekly tests for heroin and monthly tests for heroin plus barbituates and amphetamines.

THE COURT: There is some little thing I am not getting.

The weekly urine test chemically will detect, if the fellow, the man or the woman is taking heroin, right?

THE WITNESS: Right.

THE COURT: But it chemically will or will not detect amphetamines and barbituates?

THE WITNESS: Well, it's a cost issue, Judge.

THE COURT: I see. In other words, you can give a kind of a urine test that --

THE WITNESS: It will cost you about a dollar if you just want the heroin and if you want to get the others, it will cost you another -- you have to run it through the process another time and it costs you another dollar. If you want to answer the other questions, it costs the additional dollar.

So the Food and Drug Administration had set a standard that respects the cost factor. Now, most programs,

though, go ahead and spend the additional money. For example, the program I was associated with tested twice a week for all these drugs. In other words, they did more testing than was required by the FDA and of course there were more costs associated with that.

Q The program also tests for use of cocaine?

A Cocaine, yes, is the other drug that is frequently tested although cocaine is a little more difficult because it doesn't last so long in the urine but they are tested for it.

THE COURT: How do you test for cocaine?

THE WITNESS: It is the same kind of testing procedure. There are a number of laboratory techniques that are used that I don't think is important except that the technology is generally available and it is a simple matter of paying your money and getting your result.

Q What you have just described I take it is maintenance treatment?

A Yes.

Q Is it accurate to say that methadone maintenance as you have just described it should be viewed as merely an interim step toward total detoxification from any drugs of the person being maintained?

A Well, it is for some people but for others it is not and one of the problems we have had in this field, frankly,

is lack of respect for individual variation and individual need and in imposing a kind of moral judgment on this with respect to continued methadone use.

The experience is that many people need continued methadone use for many years. Not all. I don't want to appear here to say that methadone maintenance is the only form of treatment for heroin addiction or that all chronic heroin addicts need methadone maintenance. On the other hand, it's been my personal experience that very many people, by staying on methadone can get their lives together and lead productive lives, and when they stop taking methadone they don't do so well. They have a deterioration in their life condition and a reversion to heroin use.

So one has to be very cautious about pushing people off methadone maintenance and for some people it appears perhaps lifelong. We don't know. The program has not been operated that long. The number of patients that have been on for more than five or six years are very small but those patients who have been on that long appear to be doing quite well.

Q Are there a large proportion of persons who have detoxified from methadone successfully and by that I mean not reverting to drugs after the detoxification?

A Well, that's an open question in the field about

which there is a great debate. My own view is that there are indeed large numbers who have detoxified into methadone and make it without reversion to heroin use.

The follow-up studies are still not conclusive on that point and there are also many who relapse so those who argue for methadone maintenance have a considerable body of evidence on their side.

THE COURT: Wait a minute.

What's the open question?

THE WITNESS: The open question is whether there are large numbers of people who have detoxified successfully and not relapsed to heroin addiction. My view is that the answer to that is yes, but I am unable to cite a follow-up study of a group of people who have been detoxified and who for a number of years have maintained an abstinate state with respect to heroin addiction.

Q Is that due to lack of data or lack of studies?

MR. DUNN: Objection.

THE COURT: Overruled.

A I think the studies are just going on now. Frankly, the studies that have been done in the past have been pretty discouraging on this point and they indicate a very high relapse rate from people who have left methadone and I think that my expectation is that with new studies, we will find a

higher percentage of continued abstinence.

Q Previously in your testimony you described a use ofmethadone in the early '50s and I believe you characterized it as short-term detoxification programs?

A Yes.

Q Can you please--

THE COURT: May I interrupt you?

When you say a high relapse rate indicated by those other studies, you mean a relapse to heroin?

THE WITNESS: Yes, sir.

THE COURT: Or to methadone?

THE WITNESS: No. To heroin. Relapse to heroin.

THE COURT: I didn't get the question, now.

Q Previously in your testimony, Doctor, you described the use of methadone in the early 1950s.

A Yes.

Q For the detoxification of heroin addicts.

Could you please describe for the Court, the difference, if there is one, between that form of treatment and the maintenance treatment you have just described?

A Yes.

In the 1950s and until in fact the last five or six years, the standard use of methadone in the treatment of

addiction was for inpatients in hospitals and involved rapid reduction of doses within 3 to 10 days, leading to drug-free state. And that was the only use of methadone.

Now, in the last five or six years, methadone has been used in most parts of the country on an out-patient withdrawal basis. In other words, a more gradual reduction in the dose.

Q How gradual?

A Well, down to a milligram a day or even less. A milligram a week.

Q Making the total process last how long?

A A year in some cases.

Now, the FDA once we got regulations in this area of course things changed a little bit and now according to the federal regulations if the methadone is used for more than 21 days the person has to meet the criteria for maintenance and not for detoxification, so by regulation, by definition, detoxification now means the use of methadone for less than 21 days. Anything over that is maintenance.

In clinical practice, however, many people do, clinicians do reduce the dose with the patient's consent obviously, over a much more prolonged period of time so the distinctions today between maintenance and detoxification are not quite as clear as they were, as they were ten

years ago or five years.

Q What was the success rate of detoxification ten years ago, the fast detoxification?

A Very low success rate. 95 percent relapse rate within a matter of a few weeks. That was part of the discouraging context in which methadone maintenance was developed.

Q Dr. DuPont, what is the success rate of methadone maintenance programs in terms of freeing the participants from drug abuse and enabling them to hold employment?

THE COURT: That's too general. I've got to know what happens factually to people when they are on methadone maintenace and not just about some success rate. I wouldn't take that.

What happens? A fellow is on methadone maintenance and what happens to him physically and what are his abilities and can you generalize? Maybe you can't. I don't have any idea as to the answer to any of those.

THE WITNESS: Let me try --

Q I'll break it down in a series of questions.

THE COURT: Okay.

A Maybe I can just answer that question the way the Judge said it for a second, and that is that I mentioned that I got into this field from coming out of an experience in mental health in corrections so I had the experience in 1969

of seeing the first people I had ever seen maintained on methadone.

In other words, that was the new experience for me. And the most striking thing to me was I visited programs that used methadone and I could not distinguish the staff members who were using methadone from the staff members who were not. In other words, it was quite, I expected somehow to see those who were maintained on methadone, I don't know what, to look different, act different, to behave differently, to perform differently and just my own personal experience was very compelling with respect to that personal experience.

Subsequently, in the narcotics treatment administration, we hired many people who were on, maintained on methadone and again I had the experience of not being able to distinguish those employees who were maintained on methadone from those who were not in terms of their performance and behavior.

Now, on a more fundamental level, the evidence from laboratory researchers who have studied reaction times, alertness, ability to perform various tasks, is that the person who is maintained on methadone performs within the normal range of expectation of a normal population.

THE COURT: What are some of those?

THE WITNESS: Well, a vast array of tests include

simulated driving activities for example, the measurements of ability to maneuver with the hand, to quick signals, measures of alertness in terms of being able to respond to an unexpected stimulus, sleep patterns, sexuality, for example--the birth rate of people who are on methadone, both men and women appears to be normal.

They do have children at a pretty good rate and in general they function in a normal fashion. In fact, the typical person who is on methadone when you ask him how he feels is that he feels normal and he contrasts that to his feeling when he was on heroin.

Q Doctor, has research in the field of methadone had any adverse psychological factors?

A There are some side effects that occurs for people maintained on methadone. Let me make a distinction that is complex but I think it is important to make it. That is the distinction between the effects of a single dose of methadone in a non-tolerant person, that is an individual who has not developed a body tolerancefor methadone as distinguished from the effects of the same dose on a person who is tolerant to that dose.

For example, the person who is maintained on 40 milligrams of methadone every day typically, the effect of taking the dose on him is no more than would be taking a

vitamin pill in the morning for example. Whereas that same 40 milligrams dose to a non-tolerant individual, an individual such as myself, would be lethal. It would suppress respiration and there would be vast physiologic changes so all of my discussion has described the chronic tolerant individual rather than the acute administration, so --

Q What you are describing then is the effects on someone who is in a program and being maintained?

A Taking it every day at the same dose. You see, if the dose is changing, we get a different pharmachologic situation. For example, the person maintained on methadone, if he stops taking it, he will begin to have withdrawal symptoms and all kinds of other things, but I am describing what happens to him from taking the dose if he takes it every day as part of the program. Having said that, the person who takes it as part of a program, the two symptoms that have been noticed about that are a constipation in around 50 percent of --

THE COURT: These are what you refer to as side effects?

THE WITNESS: Side effects of methadone maintenance, yes, sir. Constipation in about half of the patient population. Most of that is benign and doesn't require any treatment at all. The most severe cases require

use of laxatives but that is the worst that can be said about it.

THE COURT: Wait a minute. Constipation in 50 percent.

Now, you say benign. What do you mean by that?

THE WITNESS: It doesn't have any profound metabolic or other consequences. I mean it doesn't --

THE COURT: You say it is usually benign?

THE WITNESS: Yes, sit, it is benign, in two sense. One is physiologically and the other is patient acceptance. In other words, it is a very rare situation that a patient would not want to continue methadone because of the constipation. The patient in other words accepts that as a consequence of the use of the drug.

The other side effect that is fairly common is sweating.

Q just for a moment, in cases when it is not benign, what does that mean?

A It means that the person has to require a laxative and that's all. There is no serious consequence to that side effect. It is always benign, maybe I should say.

Q Are there other side effects?

A Yes. The other is excessive sweating and this is pronounced in say 20 percent of the patients. A smaller

percentage. In some patients, this is quite serious and may even require them to stop taking methadone but that would be a small percentage.

Q What percentage?

A 2 percent, 1 percent, in that range.

Because it is quite unpleasant for the person to sweat a lot every day, but that's not -- that is uncommon and again, it is more unpleasant and uncomfortable than anything life-threatening or anything else.

THE COURT: Putting aside the 1 or 2 percent, what is the general or majority, what does this mean to them, the excessive sweating?

THE WITNESS: First of all, the half or so don't haveany excessive sweating, so they don't have a problem. But those that do have an excessive sweating, it simply means they may have to take out a handkerchief and wipe the sweat off their brow occasionally.

I have often thought that in a population you could identify the people who were on methadone on the basis of sweating and I have been sensitized to the fact-that people sweat at various degrees at various heats and I have been often fooled to see a group of people and see somebody wiping his brow with the sweat and saying he is the one on methadone and he is not, so it is not only methadone people who have

this problem, but in any event, the worst things that happens is that it is cosmetically unattractive.

Q Are there any medical side effects that affect longevity of the overall health of the person?

A No. Let me talk about one other effect that may come up and this is on a metabolic level.

The initial studies of the hormone levels with respect to methadone were conducted comparing people who were on methadone to normal populations or to general norms; and on all levels the methadone patients fell within the normal range and therefore it was concluded that in fact there was no change in any hormonal levels. In fact, more recent evidence shows that with respect to one hormone at least and that is the male sex hormone testosterone, that if you use the individual patient as his own control and have a person who is on methadone and then take him off methadone that that person's testosterone level is higher when he is off methadone than it is when he is on, but it is still within the normal range.

Now, that's been talked about in the press and I just wanted to point it out.

On heroin, the testosterone level is expressed far below the normal level so that what we have switching from heroin to methadone is movement from a sub-normal to a low

normal level of testosterone level. Aside from that, the methadone appears to be benign. There is no effect on the liver, the kidneys, the brain, the lungs, the heart. It appears to be a remarkably benign drug.

Q What body functions does testosterone --

THE COURT: No effect on the liver, the heart, the --

THE WITNESS: Kidney, heart, lungs, and again I am talking about chronic administration.

THE COURT: Brain?

THE WITNESS: Brain. Or any other organs.

THE COURT: Now, as far as -- you said that in a heroin user, the male sex hormone would be below the normal level, right?

THE WITNESS: Yes, sir.

THE COURT: And methadone would be normal --

THE WITNESS: Low-normal.

THE COURT: Go ahead.

Q What body functions does the male sex hormone regulate?

A Well, it is not clear what the role of that is especially the kind of changes that I am talking about within the normal range. It is associated statistically with aggressive behavior and with spermatogensis, the formation

of sperm, but obviously the sperm generation in methadone maintained patients is generally normal because they produce many offspring, so, again, it's not clear that within the limits of these findings that there is any behaviorable consequence to the reduced level.

Q Doctor, does long term addiction to heroin have any long term disabling effect on the human body?

A Well --

Q After withdrawl from the drug.

A Right. In contrast, in dramatic contrast to both alcohol and tobacco, which have clearly demonstrated organ toxicity as it is spoke of in medicine, the opiate drugs as a class appear to be free of that. In other words, if you compare a long term heroin addict to a long term alcoholic for example, there is a dramatic difference in terms of the somatic function, the long term alcoholic has a serious liver problem very often and often a serious brain inhibition.

Whereas, the long term addict appears to be in pretty good shape physically once he stops taking the drug and of course opiates have been used for thousands of years so that the organ toxicity you would think would have been faily obvious over time.

I don't know but in general the answer is that

heroin also appears to be free of organ toxicity.

MR. BALBER: I would like to leave the area of the physical impact of methadone on the body unless you have more questions. We will have more specific testimony later in the trial in this area.

Q Dr. DuPont, what is the success of methadone maintenance treatment? We have just gone through the medical consequences. What is its success in terms of freeing individuals from drug abuse for the rest of their lives? What do we know about it?

A Well, of course, when you talk about the rest of their lives, I think the answer is we don't know a whole lot about that.

We only have experience for five-or six years with very large numbers of people.

What we can say is that for a substantial percentage axd in various studies that percentage differs in a range of say from 30 to 80 percent, the people who are maintained on methadone show dramatic improvements in these perameters -- one the cessation of illegal drug use; two, the involvement in productive activity, employment being the main thing we are talking about, and, three, the cessation of criminal activity.

And, again, to follow the Judge's suggestion, I

would suggest that the evaluation study from the Columbia School of Public Health be included for him to read, because I think first of all it relates to New York City, it involves the initial experience with methadone in the entire country, it is done by an outside independent evaluating group and it is credible and I think very persuasive.

THE COURT: What were the three ways in which --

THE WITNESS: Reduced illegal drug use, increased employment and reduced criminal behavior.

MR. BALBER: Your Honor, we will be introducing that study later in the trial and also the director of that evaluation unit is scheduled to testify.

Q Dr. DuPont, you have just talked about the aggregate statistics for methadone success. Looking at individuals, is it capable to screen or assess individuals in treatment programs and ascertain with what degree of probability they will reman drug-free?

A Yes. I think with respect to predicting any human behavior and apparently theoretically I would say we all have to admit our limits of our capacity to do that, the best way for assessing the potential in the future is to look at what the experience has been in the past.

Many people who are on methadone programs have an outstanding employment record and have demonstrated through

their own performance their capacity to work and be a good risk of successful employment.

On the other hand, another group have a very chaotic employment record prior to treatment and a continued chaotic record after methadone, so we are not talking about any magical transformation from a problem person in performance of employment to a super-employee but what is important and this I have talked with many employers about, is I think most employers have a tendency to be overly concerned with the word drug abuse or the word heroin addiction or the word methadone maintenance and to ignore the skills that they have in assessing employment performance of an individual which are equally applicable for a person who has a histroy of drug abuse as for anybody else and the skills essentially are fundamental skills of looking at the record of the individual and using that to assess along with the interview and the other tests that are conducted of the prospects -- the prospects for future employment performance.

MR. DUNN: I object and move that the answer be stricken, your Honor.

THE COURT: You are talking about -- I take it you have observed and studied the employment of methadone maintenance people, right?

THE WITNESS: Yes, sir, I have functioned as an

employer.

THE COURT: I will overrule the objection and deny the motion.

I guess what you are saying is methadone is not going to cure somebody if they have no skills or they are unreliable for other reasons. Obviously, methadone is not going to cure them.

THE WITNESS: Your Honor, that's exactly what I am saying.

THE COURT: You are saying that if the person has the background or inherent ability or whatever it is, to get to work on time and run a lathe and keep himself clean and get along with the other people at work and obey orders and so forth and so on, if he did that before he went on drugs --

THE WITNESS: Or if he developed it afterwards and before the judgment is made.

THE COURT: Right. In other words, he can have it and still be -- he can have all those things and still be on methadone.

THE WITNESS: Precisely. Maybe I can go back for one sence to the initial two patients that I described that started methadone. One of those patients went back and got his high school equivalency, he dropped out of school at the age of 15, when he became an addict. He subsequently went

back and got the high school equivalency, went through college, got a masters degree as an aeronautic engineer and is now working as an aeronautic engineer while he is still on methadone.

If that man present himself for employment, I would submit that you would want to look at what his behavior had been in the last seven years, rather than the fact that he was taking methadone. That's all I'm saying.

BY MR. BALBER:

Q Can participants in methadone maintenance treatment programs be screened for job reliability with the same degree of certainty that the man, the non-drug user walking in off the street can be screened for job reliability?

A The answer is yes, and I think you actually have more -- the employer has more knowledge about him as a potential because of the potential involvement of the treatment agency in making those judgments. So actually he has more information on which to base his judgments than he would for somebody who is coming off the street.

Q Do the treatment agencies normally cooperate in referral relationships?

MR. DUNN: Your Honor, we are having great difficulty in hearing counsel and in hearing the witness.

THE COURT: Okay. Both of you, then, speak slower and louder so everybody in the room can hear you.

MR. BALBER: Did you catch the question?

(Question read.)

A The answer is yes.

MR. DUNN: Objection, your Honor.

THE COURT: Overruled.

A (Continuing) I would like to qualify my answer, if I might, and that is that the treatment agencies obviously are

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interested in placing people in employment, so that the employer has to make his own independent judgment. But I think the treatment agency can be useful in the employer making the judgment.

MR. DUNN: Your Honor, I object and move the answer be stricken as being unresponsive to the question.

THE COURT: No; I don't think it is.

I have a little trouble generalizing or even picturing how I could generalize a man coming in and applying for a job at the Transit Authority.

Now, if he had at one time worked as a mechanic, say, for an automobile garage, and had good work habits and skills, then he had gotten off on heroin and had been fired, and then he was back in a methadone program. You are sitting there across the desk, and you are trying to determine whether tohire him to maintain buses for the Public Service, the transportation system.

What have you got in the way of a rec ord? You've got what I say, but what does it mean? I would think it would have some positive things, the fact that the man had a good record before he got on heroin, but whether these buses are run right we all take very seriously.

THE WITNESS: That's true.

THE COURT: And so what are you going to do about

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his record and the information about him at that time?

Now, obviously, if he has gotten another job if he has gotten a job back at the garage or some garage, and he has performed successfully, well, that's a very telling piece of information.

THE WITNESS: I think that's a more common experience.

THE COURT: It is?

THE WITNESS: Than the second. The first way you presented it, I will agree completely that that presents an employer with a kind of situation where he has to make a personal judgment with respect to an individual, and he does not really have a medical history that he can rely on, and that's -- I think that is a more difficult case than the second one you said, where the individual has not been on the methadone program for two years, and during that two years he has been a reliable employee at another neighborhood garage as a mechanic, and he is now attempting to better himself by coming to the Transit Authority, whoever else -- not specifically that -- and he says, "Here, judge me on the basis of my performance in the last two years. And you know, you should know this about me. There was a period of five years when I was in prison and on heroin and methadone, and that was preceded by two years,"and I am saying, make the judgment, par-

ticularly as an employer would. I make a judgment as an employer, look at the medical history as to what is most relevant as to what is going on.

THE COURT: I guess really what your testimony is as an expert is that certainly a man can conceivably exercise his skills and be reliable while he is under methadone. He has the potential for that, depending on whether certain things are favorable.

Now, going back to the screening, I mean, that is what you are saying?

THE WITNESS: Absolutely.

THE COURT: Now, going back to the screening, these methadone treatment agencies are interested in placing people who are getting treated; right?

THE WITNESS: Absolutely.

THE COURT: Now, if I am the first prospective employer --

THE WITNESS: You've got to take a leap of faith.

THE COURT: -- what are my risks?

THE WITNESS: It depends a little bit on what his history was before he became unemployed. Obviously, if a person has a history of employment or good school performance that precedes his heroin use, your risks are much less than if you have a person who is, as this patient i mentioned,

dropped out of the school at fifteen, spent eight years on heroin and had no background at all. He had to go to school.

THE COURT: Talking about the fellow on heroin and then on a methdone maintenance program, just outline what are my risks. If I am asked to employ him, and I am the first proposed employer subsequent to the addiction.

THE WITNESS: I can't put a percentage on the likelihood.

THE COURT: I am not asking you to place a percentage. What type of risks? Is the risk that he will go back to heroin before anybody can detect it? Is that one of the risks? Is another risk that he will not in fact have all his capabilities because he is taking methadone?

That is the kind of thing I want you to speak to.

THE WITNESS: I think I can reassure you on the last point, that that is not a risk.

THE COURT: Absolutely not?

THE WITNESS: Absolutely not. That he will not be a problem to you as an employer because he is taking methadone. Now, he may be a problem, but I would put the kind of problems that I consider as an employer, and I am not sure I would put these in priority, but these are the kind of things I would think about.

One is in terms of leaving the job. In other

words, unreliable in terms of just absolute attendance at the job. The lure of the street, the tendency to backslide, all the rest, that would be a risk that the employer would run.

Another risk --

THE COURT: Because he has gotten -- it is the risk of a fellow who has once gotten off the track, that he may feel some pressure to do the same thing again?

THE WITNESS: Yes, sir, and typically, the kind of situation that leads to that is some very great personal disappointment. For example, a break-up of a marriage or the death of a child or a parent dying. Something that leads to feelings of depression in the individual and hopenessness are often associated with relapse.

Now, that is the kind of thing employers typically do not concern themselves with, and I am not suggesting they start, but I am just suggesting to you that it is the kind of setting in which relapse often occurs.

THE COURT: Is this relapse to heroin or just to --

THE WITNESS: To heroin, yes, sir, and to the street life style.

THE COURT: The fellow on methadone, if he has got a severe enough temptation, he might just say, "To heck with it. I'll go back to my heroin"?

MEP 7 DuPont - direct

THE WITNESS: Well, you bring up a point that I didn't mention, and one of the aspects of methadone that makes it particularly effective is that while a person -- Let's say the person, that that day he has this experience, takes his methadone at the clinic at eight a.m. Okay. He comes to work, and something awful happens, and he breaks down, and he goes off that afternoon and shoots up heroin.

Now, methadone, because of what is called cross-tolerance or what is talked of as blockade in some instances, will stop the euphoric effect of the heroin, so the individual has a kind of protection against re-addiction to heroin.

The simple injection of heroin that evening out of anger, frustration or pleasure seeking will not lead to a relapse of his behavior and the resumption of street and the addictive life style. He will have to stop taking that methadone in order to readopt the high and all the rest of the consequences of heroin addiction.

In other words, he has to go beyond just the injection.

THE COURT: Okay. But the effect you get from heroin is different from the effect you get from methadone, isn't it?

THE WITNESS: Yes, sir.

THE COURT: And so a fellow just has a tremendous

craving for pleasure; he's just always intensely bored and frustrated.

THE WITNESS: Yes, sir.

THE COURT: Now, he might remember that he got a tremendous kick from heroin that he doesn't get from methadone.

THE WITNESS: Yes.

THE COURT: And even though he isn't now addicted to heroin, he remembers that kick.

THE WITNESS: Yes.

THE COURT: And he might say, "Okay, that's what I want."

THE WITNESS: Yes.

THE COURT: Now, so he could go out and shoot up with heroin and he would have -- as long as the effects of that dose of heroin were on, he would have whatever problems are associated with heroin?

THE WITNESS: No; he would not.

THE COURT: He wouldn't?

THE WITNESS: Not until he stopped taking the methadone.

THE COURT: Well, okay.

THE WITNESS: Because it blocks those effects.

THE COURT: Let's take an example that might never occur.

He is repairing buses.

THE WITNESS: Yes, sir.

THE COURT: And all of a sudden he gets hold of some heroin, and he shoots. He is taking methadone at eight a.m., and at two in the afternoon he takes a shot of heroin.

THE WITNESS: Yes.

THE COURT: Now, what is he going to be like at that point?

THE WITNESS: Well, it depends to some extent on the dose of heroin that he takes, but the typical dose that would be taken in New York City would be a dose of about ten milligrams, maybe as much as twenty. Unlikely to be more than that.

If the person is taking forty to sixty milligrams of methadone, the effect he will have of taking that will be nothing. In other words, he will not have that euphoria. He will not be sleepy or anything else.

THE COURT: What is a typical daily dose of methadone?

THE WITNESS: Forty to sixty milligrams.

THE COURT: And the typical dose of heroin?

THE WITNESS: Heroin is five to ten milligrams, rarely as much as twenty.

THE COURT: So he expects a big kick, and he just doesn't get it?

THE WITNESS: That's right. He has to stop taking that methadone in order to get that experience back again.

THE COURT: Well, then what does he do?

THE WITNESS: What does he do?

THE COURT: He has spent all this money for heroin, and he's shot it into himself, and then to his great surprise he doesn't feel anything.

THE WITNESS: But he is told that that would be the experience beforehand by these people who work with him in the clinic. That really would not come as a surprise. He might not believe it, and he would try it out. What he would then do --

THE COURT: I am not trying to strain anything, but I assume that there are situations where people get back into heroin.

THE WITNESS: Absolutely.

THE COURT: And what is the process?

THE WITNESS: The process had to do with leaving the treatment program and stopping taking the methadone, giving up the job and assuming what I think is the street addict life style.

THE COURT: Let's just try to follow through.

He has taken the methadone at eight a.m. one morning.

THE WITNESS: Yes.

THE COURT: HIs wife leaves him that evening.

THE WITNESS: Okay.

THE COURT: Some tremendous problem.

THE WITNESS: Right.

THE COURT: And he is desperate, and he remembers the heroin.

THE WITNESS: Yes.

THE COURT: Now, he has been in the course. He has the knowledge you have described. Now, what is the path that would be the worst for him?

THE WITNESS: Well, the typical failure course in that kind of situation is that he will feel like the job isn't worth anything anyhow, the boss is giving him a hard time, his pay isn't enough, they know he is a former addict, and they put him in the lowest-paying job they have there, and he is fed up with it, and that's the end of that.

So he doesn't go back to work the next day, and he doesn't go to the clinic the next day, either, and he festers on his depression; he decides to pick up with his old acquaintances out on the street. He drops out of the treatment program. He leaves the employment, and that's what goes on.

MEP 12 DuPont - direct

Now, he may come back to the job. Let's say that happened on MOnday, and he may come back to the job on Thursday, and he may look disheveled, and they may say, "Where have you been? What's happened?" And he may give some kind of story and fritter away at the job.

But basically it's a pattern an employer is not unfamiliar with of a person who is leaving the job, who is failing at the most rudimentary aspects of taking care of business, and that is the typical pattern.

That is one risk to the employer. That's not the only one. The one I think employers are particularly fearful of is the crime associated with the acquisition of heroin and the fact that he may steal or be engaged in some other illegal activity at the employment site that runs a cost and a risk associated with it, and that is also a great concern, and I will admit that.

It is not a unique concern for the former addict. It is a problem that employers have with all employees, and I know -- I think that vigilance concerned about that is important.

I think it is unfair to say as a class, just because a person is a former addict that we are not going to expose him to a situation where he can walk off with a typewriter.

THE COURT: If he is on methadone, he is no longer taking the drug that costs him all that money?

THE WITNESS: Yes, sir.

THE COURT: So he is no longer in theory feeling any necessity to raise money for heroin, obviously.

THE WITNESS: Right.

THE COURT: But you are saying if he has committed a crime, he has engaged in criminal behavior, there may be a residue of that even when he is on methadone?

THE WITNESS: Yes, sir. There are criminals who are criminals before they are addicts, who maintain their criminal behavior while they are addicts and after they are on a program continue to be criminals.

THE COURT: I suppose there are people who are criminals because of heroin, and they may have some residual criminal habit after they are even on methadone, right?

THE WITNESS: Yes, sir. My point is I think you have captured it very well is that this needs to be an individual judgment. It may on the basis of the performance ofthe individual.

THE COURT: I haven't said that yet.

THE WITNESS: I thought you said something like that. That's my point.

THE COURT: That's down the line.

THE WITNESS: That's my point.

Q Dr. DuPont, if we can backtrack a little bit can you explain the pharmachological rationale about the blockad you referred to the cross-tolerance?

A The body adapts and organisms generally adapts because this is not even necessarily human or mammalian experience, it adapts to the constant level of the opiate drugs so that as the dose continues at the same level, there is less and less of an effect until there is essentially no effect for many characteristics. An example of that would be sleepiness or respiratory depression.

For example, the initial dose of a narcotic on a person would be to express his respiration and even to stop it.

THE COURT: I'm not sure, are you talking about heroin or methadone?

THE WITNESS: All these drugs have the same characteristics with respect to tolerance, methadone, heroin, morphine.

MR. BALBER: Your Honor, Dr. DuPont, I asked him to explain what the block effect is and what its pharmacological rationale is and how it works, what the cross-tolerance was.

A The basic experience is that with this class of

drug, the class of opiate drugs, that administration of a constant dose produces progressively diminished responses within any measurable perameter, for example, respiratory depression. A single dose of 40 milligrams of methadone or morphine will be lethal to a non-tolerant individual. As the body of that individual becomes used to or tolerant of the drug, it produces no measurable respiratory depression.

Now, that's the basis of the scheduled blockade theory. What that means is if the person is taking 40 milligrams of methadone, if the then takes 5 or 10 milligrams of heroin, that is incrementally not sufficient increase to overcome the tolerance to the 40 milligrams of methadone, so you have no effect.

Now, raise the dose of heroin to some astronomical level like 500 milligrams, you would then get an effect.

But then the body could become, if you kept the 500 milligrams up, it would become tolerant to that level. So the body's ability to become tolerant to a constant dose is almost limitless.

Q And what is the average street dose of heroin?

A 5 or 10 milligrams.

Q Not anywhere near 500?

A No, nothing like 500.

Q A person comes into a methadone clinic, Dr. DuPont,

and they ingest their methadone. How long is this blockade effective after the methadone is ingested?

A 24 hours or 36 hours; at least 24.

Q 36?

A 24, 36, even 48.

There is some individual variation.

Q Then a person could actually miss a dose and still be maintained?

A Yes. He will start having symptoms of withdrawal though at around 34 to 36 hours and again that will depend on what his dose was.

Q Dr. DuPont, are you familiar with the federal regulations, the FDA regulations governing methadone treatment programs?

A Yes, I am.

Q Did you participate in formulating those regulations?

A Yes, I did.

Q What is the purpose of those regulations?

A The purpose of those regulations is to establish in regulations the circumstances under which methadone can be used as a legitimate treatment for heroin addiction. And they define certain limits, for example, that there must be at least one physician for 300 patients within a program, and

many other detailed regulations.

Q And what was it your intent that these regulations accomplish?

A Well, we had a situation that was developing out of control of methadone being used in situations where there wasn't adequate control of the use of it and adequate treatment was not being provided, and frankly, our concern was to protect the public health.

Methadone was being diverted and it was a very serious problem and we attempted to at least ameliorate that problem with these regulations.

THE COURT: Now, do the regulations make any statement as to the employability or to the effects of methadone? I haven't read them. Did they make any predictions or any prognosis or any statements as to what methadone maintained men or women can or cannot do? Anything like that?

THE WITNESS: I don't have that particular part of the regulations clearly in my mind, but I can assure you that the intention, the expectation is that the majority or people who are on methadone --

MR. DUNN: Your Honor, I move to strike the witness' answer as unresponsive.

THE COURT: Well, it really isn't what I am asking.

I was wondering if there is anything in those regulations which makes the kind of statement I'm talking about.

THE WITNESS: I don't know.

MR. BALBER: Your Honor, the regulations-- we produced a copy of the regulations. They have been marked as Plaintiff's Exhibit 17.

THE COURT: I know that. Do they say anything about the subject I am talking about? Do they state in so many terms that someone who is on the kind of program that is prescribed here will be normally alert, can perform this way or that way, anything like that?

MR. BALBER: There is a preface to the regulations that appeared in the federal register, your Honor, that talks about the fact that methadone is no longer experimental and itis now an approved and authorized form of treatment gen= erally.

THE COURT: That's a form of treatment, but there are a lot of people who are under treatment for a lot of things. Treatment doesn't men you perform. So, but is there anything in the regulations that states or gives any kind of seal of approval as to what somebody under this treatment can or cannot do?

MR. BALBER: No, your Honor.

THE COURT: Okay, well that's it.

MR. BALBAR: There is a State regulatory structure as well which this witness is not competent to testify about. We have introduced a copy of those regulations as Plaintiff's Exhibit 16.

Q Dr. DuPont, you have talked about the history of methadone maintenance treatment since 1964 previously in your testimony.

Is methadone maintenance to be considered an experimental form of treatment today?

A No.

Q Why not?

A Because it is an accepted part of the approach to the treatment of heroin addiction and in the federal government's activities, about 50 percent of the heroin addicts who are in treatment are being treated in methadone maintenance in federally funded treatment programs, so we consider it a fully effective, reasonable, desirable treatment.

Q At the Special Action Office have you formulated a treatment strategy to deal with heroin addiction?

A Well, the basic strategy I guess is that we want to provide treatment for as many heroin addicts as we can get into treatment and our approach is to be open with respect to the particular modality. The federal government does not have a strategy that says methadone maintenance is the only

acceptable treatment for heroin addition but simply that it is one of a number that are acceptable.

Q To what extent is it a component in the federal levels?

A About half of the heroin addicts, former heroin addicts who are in treatment are on methadone treatment in the federal government and, of course, it is about 40 percent of all drug abusers because we have about 30 percent of our population that is not drug abusers.

Q How many persons are being maintained on methadone nationwide?

A About 75,000, of whom about half are in New York City.

Q What proportion of former heroin addicts in treatment are in methadone maintenance?

A Nationally, the number would be about 60 percent.

THE COURT: What was that?

A About 60 percent of all the heroin addicts in treatment in the nation are on methadone maintenance. Before, when I was talking about 50 percent, I was talking about those in federally funded programs.

MR. BALBAR: That concludes our direct examination, your Honor.

.m. melt 1 DuPont-cross 64

Q Was one of its principal uses at one time the treatment of morphine addiction?

A That was one of its commonly-used -- I think the main use of heroin in its heyday was as a cough preparation but it also was used as a soothing tonic for babies, it was given to colicy infants and it was used to cure alcoholism and morphine addiction and it was considered a wonder drug in its day.

Q In the treatment of morphine addiction, treatment of alcoholism, was heroin at that time used much the same as methadone is used today, Doctor?

A I would say no. There was very little understanding of the basic pharmachology of opiate drugs at the time and one of the substantial changes in the last thirty years has been our ability to identify opiate-like drugs in a very systematic way.

Of course methadone is well known as an opiate drug producing addictive effects in every way, similar to the effects of heroin or morphine so there has never been a period when methadone was not thought of as a non-addictive kind of miracle drug. Those were rather free-wheeling days , they were before the days of Pure Food and Drug Act in 1906 and were generally days when there wasn't a lot known about drugs so I would say it was different with respect to

A Yes, and I agree completely with the statement and perhaps I can reconcile the two points. The question I thought you asked me had to do with when a person first begins heroin use, in other words, is his initial use of heroin on the basis of disordered brain biology. It was to that question that I said no.

Dr. Mandel was addressing the question of once addiction is established, is continued heroin use based on disordered biology, and his answer is yes, and I think he would agree with me about the initial use, in other words, there is not a brain biology deficit that precedes the heroin use.

There is a brain biology problem that is induced by the use of heroin and it then is persistent and I agree completely with that. I think that is the thrust of what Dr. Mandel is saying in that quotation.

Q This would include the lantrogenic addiction?

A It is not on the basis of intention, it is a biological phenomenon secondary to the addiction itself.

Q Can you describe the disordered brain biology?

A I have done the best I can. I think you may have other witnesses that are better able to get into the specifics of that.

Q Is this a reversible disorder?

times a week instead of once a week until we get this straightened out."

In other words, he will exert controls on the individual but what he will not do is inform the employer of these actions.

THE COURT: Now how does the employer protect himself?

A Just the way he protects himself from any other employee and I am not suggesting that any special dispensation be granted to people because they are on methadone or for that matter because all of the arguments that I have been presenting apply equally to the other rehabilitated person who is in a drug-free program.

But, in any event, that he not relax any of his vigilance with respect to, is the person showing up on time, is he really doing his job, is he reliable in his relationship with his peers and his superiors.

THE COURT: Okay. If a man does, in fact, revert to heroin or takes any of these other drugs--I should know this but I really don't -- are the manifestations discernible? Can a foreman who is watching him and knows that he is on a methadone program, can he discern a problem or is the problem a latent defect where he is going to foul up and nobody will ever know it?

run and she voluntarily gave up her license to do it when the FDA closed in on her. And that is not an uncommon experience around the country.

Q You say that is --

A Not uncommon. I don't know what the number is but it is not uncommon.

Q The employer, then, has no way of knowing, Doctor, does he, whether or not a program is adhering to the rules under which it must operate?

A Well, it is --

THE COURT: I don't understand that question. Under which the program must operate?

MR. DUNN: Yes.

Q Are there good programs and programs not as good?

A Yes, absolutely, and the problem is that even within the bad programs, there are some good patients and within the best programs there are some bad patients so I think that it gets back to the issue of making a judgment on an individual person.

Q Let's go back a moment.

You testified that the methadone treatment program seeks to treat not only heroin addiction but addiction to other illicit drugs.

A Among heroin addicts, yes, sir. In other words, a

MEP

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER et al., Plaintiffs,	
versus	72 Civil 5307
NEW YORK CITY TRANSIT AUTHORITY, Defendants.	

New York, N. Y.

October 22, 1974 - 10:30 a.m.

Before

HON. THOMAS P. GRIESA,

District Judge.

APPEARANCES:

HARLON L. DALTON, Esq.,
ERIC D. BALBER, Esq.,
MARK C. MORRILL, Esq.,
ELIZABETH B. DuBOIS, Esq., and
MICHAEL MELTSNER, Esq.,
Attorneys for Plaintiffs

JOHN G. deROOS, Esq.,
Attorney for Transit defendants
EDWARD W. SUMMERS, Esq., and
GILBERT T. DUNN, Esq., of Counsel

A. MICHAEL WEBER, Esq.,
Assistant Corporation Counsel, for Civil Service Commission

WILLIAM A. ROSKIN, Esq.,
Department of Personnel, Civil Service Commission

* * *

MISS DU BOIS: Your Honor, one question -- well, two small problems for the Court that I would just like to ask. On page 76, proposed finding 71-A. This was the rational breakdown sent to us in a letter that we have marked as Plaintiff's Exhibit 20 by Dr. Trigg, the Transit Authority's consultant. We would like to avoid having to take up trial time by calling Dr. Trigg and getting him to say that these are his statistics, the statistics he gave us. and what I wonder is whether the Transit Authority can't stipulate that those are accurate so that we don't have to prove that at trial.

THE COURT: How about 71-A?

MR. SUMMERS: I have no basis, your Honor, for either agreeing or disagreeing with the figure. I think there is testimony by our doctor that the majority at

least of the persons that referred to Dr. Trigg who were black or other minority studies, however, we will stipulate if the plaintiffs have the letter that he has so indicated.

THE COURT: Will you stipulate that if he were called he would so testify?

MR. SUMMERS: Correct, yes.

Without conceding the truth.

MISS DU BOIS: If called would so testify. Okay, thank you, your Honor.

THE COURT: How did we change the document here, page 76? Why don't we say at the end of where it says, "The TA has not indicated its position except that the TA agrees that Dr. Trigg would testify to the contents of 71-A." Is that all right?

MISS DU BOIS: That's all right with us, your Honor, if that's the equivalent for the record of your Honor of his testimony.

THE COURT: Sure.

Is that okay, Mr. Summers?

MR. SUMMERS: Yes, sir.

jbrf 3

* * *

Number 20.

THE COURT: This is now stipulated? 18 and 19 will not be received. 20 will be received.

20 will not be received. It is stipulated.

Now 21.

MISS DU BOIS: 21, your Honor, on page 77 proposed finding 71-C -- I am sorry -- 71-R, that's right, what the footnote indicates that the Court for the statistics on the racial breakdown of the methadone maintenance population comes from Rockefeller University Methadone Information Center, and we have in a letter from an official of the Center a statement as to what those statistics are. We

jbrf 4

would like to avoid having to call the person to the stand to prove those statistics.

THE COURT: What about that?

MR. SUMMERS: I think we could treat this, your Honor, the same way we treated the letter from Dr. Trigg.

HAROLD L. TRIGG, M. D.
307 SECOND AVENUE
NEW YORK, N. Y. 10003

TELEPHONE 677-2622

October 14, 1974

ERic D. Balber
Legal Action Center
of the City of New York
271 Madison Avenue
New York, New York 10016

Re: Beazer v. New York City Transit Authority

Dear Mr. Balber:

I finally reached a breakdown of the race/ethnicity of individuals referred to me by New York City Transit Authority and Manhattan & Bronx Surface Transit Operating Authority.

The figures for the New York City Transit Authority cover the period July 19th, 1972 through October 1st., 1974. The figures for Manhattan & Bronx Surface Transit Operating Authority cover the period of December 14th, 1972 through October 1st., 1974.

New York City Transit Authority:

Blacks	Hispanics	Whites
34	1	6

Manhattan and Bronx Surface Operating Authority:

Blacks	Hispanics	Whites
5	4	4

The above figures should be taken in the context of my deposition in the Beazer case on April 11th, 1974.

Very truly yours,

Harold L. Trigg

Harold L. Trigg, M.D.

HLT/no
CC: Alan M. Taylor

THE ROCKEFELLER UNIVERSITY
New York, N.Y. 10021
METHADONE INFORMATION CENTER

August 27, 1974

Mr. Eric Balber
Legal Action Center
271 Madison Avenue
New York, New York 10016

Dear Mr. Balber:

In answer to your questions regarding the parameters of methadone maintenance treatment in New York City, I hope the following is helpful to you.

1) Total census for Metropolitan New York (inlcudes the five boroughs: Nassau, Suffolk, Rockland and Westchester Counties) - 36,920 as of 8/16/74

2) Census for New York City proper - 33,347 as of 8/11/74

3) The summary of the "Report of Individual's Progress" for Metropolitan New York is enclosed. You will note figures for such things as employment, incidence of drug abuse, etc.

4) Re racial/ethnic breakdown of the patient population

a.	Black	38.5
b.	White	33.14
c.	Puerto Rican	22.5
d.	Undefined	5.85

These figures are based on a 1,400 patient sample. The sample was drawn on a random basis and very accurately reflects the total population for Metropolitan New York City.

Very truly yours,

Peter L. Vogelson
Coordinator of Field Service

Enclosure

Griesa

CARL A. BEAZER, et al, 195

Plaintiffs

-against- 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,

Defendants

October 24, 1974
11:00 a.m.

PRESENT:

MR. DALTON, ESQ.
MR. BALBER, ESQ.
MR. MORRILL, ESQ.
MISS DUBOIS, ESQ.
MR. MELTSNER, ESQ.
Attorneys for plaintiffs

MR. SUMMERS, ESQ.
MR. DUNN, ESQ.
Attorneys for Transit Authority

MISS GOLD, ESQ.
Assistant Corporation Counsel for
Civil Service Commission
MR. ROSKIN, ESQ.

- - -

* * *

C A R L B E A Z E R, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BALBER:

Q Please keep your voice up during your testimony, sir, so everyone will be able to hear you.

A All right.

Q Mr. Beazer, where did you grow up?

A I grew up in Harlem.

Q How much education did you have?

A Up until about last year -- I just got my high school diploma.

Q How did you get that diploma?

A From the Veterans Administration.

Q Did you serve in the Military?

A Yes, I did, four years.

Q What branch?

A The Navy.

Q What kind of discharge did you get?

A I got an honorable discharge.

Q Mr. Beazer, how old were you when you first became involved with drugs?

A Oh, I was around 13 years old. At that time drugs was all over. Supers were selling drugs, landlords were selling drugs.

THE COURT: Please limit your answers to his questions. He just asked you when you got involved with drugs.

That was when you were 13 years old?

THE WITNESS: When I was around 13, right.

Q Under what circumstances did you get involved with drugs?

A Drugs was all around me, and in the neighborhood I live at that time was the constant thing. Like I said before, the landlord was using drugs and selling it. The super was using drugs and selling it. My next door neighbor was using drugs. Everyone was using drugs.

Q What kind of drugs?

A Heroin.

Q Other drugs as well?

cp3 Beazer-direct

A Cocaine, reefers, the whole gang.

Q What do you mean by reefers?

A Marihuana.

Q Did you at some point in your life become addicted to heroin?

A Yes, I became addicted at around 22, 23 years old, somewheres around there.

Q What events in your life were occurring at that time?

A Well, I was just -- I had just bought a home and my wife was messing around and I just had a child. Things were pretty tough for me. I just reverted to the old habit. I didn't drink too much, so -- just went to drugs.

Q During the period of time that you were an addict, before you entered the methadone maintenance program, did you ever try to get off heroin?

A Oh, yes, several times. I tried to detox about five, six different times in hospitals and quite a few times on my own.

Q Can you describe what the hospital experience was like, what happened?

A In the hospital there was, according to the program, there will bring you in for seven days or 21 days and they give you methadone in decreasing doses and

then put you on out in the street to make it for yourself. No counselling or nothing.

Q Did you experience any physical symptoms when you were in the hospital?

A It wasn't too bad because they were giving us methadone, but sleeping and sweating, bowel movements, carrying on.

MR. DUNN: I object, your Honor, unless counsel identifies the hospital or the particular admission to the hospital. The witness has testified that he has been in the hospital about five times.

THE COURT: I would like to get a chronology now. On page 84 of Exhibit 31 there is a statement about the addiction and the detoxification attempts. I assume you know when those occurred.

Q Mr. Beazer, as best you can recollect, can you first state the names of the various institutions that you were hospitalized in?

A It might not be in the right order: Harlem Hospital. I think I was in Bernstein's Institute, Interfaith, and that is about it. I don't think there were any more.

THE COURT: What was the first one of those hospitals where you were detoxified?

cp5 Beazer-direct

THE WITNESS: I believe it was Bernstein's, Bernstein's Institute.

THE COURT: Do you remember the year?

THE WITNESS: No, not too well.

THE COURT: Approximately?

THE WITNESS: About 69 or 68. I'm not sure.

THE COURT: Okay.

When did you first enter the Veterans Administration Program?

THE WITNESS: The Veterans Administration. I think I entered that in about '71, the beginning of 1971.

Q You started to describe an experience that you had experienced when you were institionalized before the Veterans Administration Program. Was this the common experience in all the detoxification programs you were in or did they vary?

MR. DUNN: Objection.

THE COURT: Sustained.

A It was the same thing, more or less.

THE COURT: I sustained the objection.

Q Can you describe the experience that you had in each institution you were in as best you can recall?

A Everyone I went into they -- you had to go through quite a bit of lying.

THE COURT: I'm sorry. I really didn't understand. I will overrule the objection. You are asking him what experience he had in the different institutions where he tried to be detoxified.

MR. BALBER: Yes, your Honor.

THE COURT: I think he can state that in general terms. Go ahead.

A To get in there, we had to do quite a bit of lying, carrying on, because at that time they wasn't taking people in there. They just started. They had lines.

Q Are you talking about the VA program or the detox program?

A The detox program.

Q Let's focus on the detox program.

A Yes.

Q Begin again and tell us what your experiences were like in those programs, if you can.

A What I had to go through to get in the program or with me physically?

Q First let's start out with what you had to do when you tried to get into the program, and then we will get into what happened physically.

THE COURT: I just don't conceive of how it is going to help you to find out what happened to him on the

detoxification. He, at the time he was discharged, was on the methadone program. Right?

MR. BALBER: Yes, your Honor. The reason that I had planned this line of inquiry was because it appeared to plaintiff's counsel at least that in the Transit Authority's proposed findings of fact, they covered the VA program and prior programs that Mr.Beazer had enrolled in.

THE COURT: I assume that the methadone maintenance program is something in and of itself substantially different from these detoxification programs where they are given rapidly decreasing dosages of methadone over a period of a few days.

MR. BALBER: Yes your Honor.

THE COURT: That was made perfectly clear by Dr. Dupont. It is a matter of common sense and I think to go into the details of a man's experience is really not going to contribute.

MR. BALBER: Thank you, your Honor.

You have stated plaintiff's position precisely in factual terms, so I will just get to the VA program.

Q Can you describe, as best you can, Mr. Beazer, the events surrounding your admission to the VA program.

A I was working for the Transit Authority at the

time and I was getting old, and I wanted to get off this thing, so I went to the VA, because I was a veteran. I heard about it and I went there and applied.

Q What happened when you applied?

A Well, they told me that they was filled up, so I turned around and told them that I was having all types of problems. I was beating my wife and I was ready to commit suicide and everything, and I needed to get in this program or I might lose my job. You had to lie. They took me up to the psychiatric ward and kept me there until an opening came up in the methadone maintenance program. I stayed up there for about three weeks.

Q In the psychiatric ward?

A Yes.

Q Then when did you enter the methandone program itself?

A I'd say maybe three weeks prior to that, that I entered into the methadone program.

Q What happened when you entered into the program; what medical services were given you and what did you experience?

A When I first got in there I had to see a psychiatrist and a doctor and after that my talking to a counsellor and I gave them my medical history and every-

thing and they gave me methadone, a very low rate, and from then on we went through the same thing daily. We had counselling, therapeutic plans and role playing and recreation and swimming, anything to get your health back, and the methadone in increasing doses.

Q Did it ever level off?

A Yes, it levelled off after it got to, I think it was, a hundred milligrams. That was the levelling dosage.

Q How long were you in the VA hospital?

A I believe I was in there eight, nine weeks.

Q And this was what year?

A I believe that was the beginning of 1971.

Q After you left the hospital did you continue to participate in some way in the VA program?

A Yes, I had to come back each and every day and be counselled, be checked out by a doctor. I had to give up the urine daily and I had to do that before I go to work or any place.

Q You say you gave up the urine daily. What purpose was that for?

A It was demanded at that time and they wanted -- so they would know that I'm not messing around any more and trying to get myself cured.

Q What do you mean by "messing around"?

A Using any type of drugs.

Q What happened when you went to see the counsellor? What type of things did you discuss?

A He counselled us. He was an ex-addict.

THE COURT: Did you talk to the counsellor every day?

THE WITNESS: Each day, and being that he was an ex-addict he knew how to relate. He wanted to know how I was doing at home; did I have any personal problems I couldn't handle; was the methadone too much; was it causing me to go through any changes; "Let's go to the movies. You know, I'm trying to keep you off the street."

They would have all type of recreational things going on at night and day to keep you away from the people that you used to hang around with.

THE COURT: What were your hours at the Transit Authority?

THE WITNESS: I was working 2.00 to 10.00 P.M. at 180th Street.

THE COURT: 2 in the afternoon?

THE WITNESS: Right.

THE COURT: To 10.00 P.M.?

THE WITNESS: 10.00 P.M., right.

THE COURT: On the average, what part of the day would you spend at the Veterans Administration Hospital on this program?

THE WITNESS: Well, they was open at 8 o'clock, so from 8 to maybe -- well, it was according. If I had to do something from 8 to 9 -- I had to talk to my counsellor regardless. That took at least an hour. If something was going on I had to be there until 12 o'clock.

THE COURT: What would there be that would keep you there the whole morning?

THE WITNESS: The doctor might want to see me, something might have popped up. There might be a therapy session going on, and he might -- I have to go some place for recreational things that was going on. They wanted you to be active. That is the whole thing.

THE COURT: And as to your marriage, are you still married?

THE WITNESS: Well, from what I understand, my wife has divorced me. I have never checked into it or nothing like that.

THE COURT: When did you and your wife stop living together?

THE WITNESS: When I was about 25, 26 years old.

Q How old are you now?

A 39.

THE COURT: So lets get the chronology. You are 39 now?

THE WITNESS: Yes, sir.

THE COURT: That would be about 1961 that you separated, 13 or 14 years ago?

THE WITNESS: Yes, sir.

THE COURT: In 1961?

THE WITNESS: Yes, something like that, right.

THE COURT: Do your children live with you?

THE WITNESS: No, none of my children live with me. I used to support them up until the time my wife got married. No, up until the time I lost my job. They was taking money out of my salary each and every week. I think it was $60.

THE COURT: So neither your wife nor your children live with you now?

THE WITNESS: No.

THE COURT: When you separated, your wife took the children?

THE WITNESS: Yes.

THE COURT: Okay.

Q Has your wife remarried?

A I really don't know. I havent received any

papers. I'm only going by what she told me. I haven't received no papers or anything. She is living with somebody.

Q Did any supervisors of the Transit Authority or any Transit Authority officials accuse you of taking drugs before you entered the program?

A No, I had good rapport with my supervisors. In fact, I trained right through them.

Q Mr. Beazer, during the time you were enrolled in the VA methadone program, can you recall how you felt physically? Were you dizzy? Did you feel faint? Did you feel drowsy?

A Well, that offset at the beginning when my body was getting used to it. I went through those type of changes, but after I got stabilized.

Q How long was that beginning period?

A Quite a long time. I'd say two, three weeks.

Q Two or three weeks?

A Right.

Q What happened after the two or three-week period?

A I started tapering off. Then it is almost like being immune to it. You just take something like you have to take every day and that is the end of it.

Q Did you ever use heroin again or other illegal

drugs after you enrolled in the VA program?

A I messed around once.

Q Would you describe what you mean by messed around?

A I had to prove something to myself, that the methadone was working, so I used drugs once.

Q What drugs?

A Heroin, cocaine.

Q How many times?

A Just once.

Q What did you experience?

A Well, a decrease in my pocket, as far as money is concerned. That made me pretty mad. And I felt pretty stupid about it.

Q What did you experience physically?

A Oh, nothing. I didn't experience anything physically.

THE COURT: Did you get any enjoyment or any of the effect of heroin?

THE WITNESS: Not a thing.

THE COURT: Or cocaine?

THE WITNESS: Not a thing. Just got disgusted. Just got mad.

Q Have you used heroin since that occasion?

A No, never.

THE COURT: Do you remember when that was?

THE WITNESS: I'm not sure. It might be -- I don't know, '72, '73. I'm not sure.

Q Have you usedheroin since that occasion?

A No, no.

Q Have you used cocaine since that occasion?

A No.

Q Have you used barbiturates?

A No, I never did use barbiturates.

Q Have you used amphetamine, speed?

A No.

Q Do you drink?

A No. No, I don't drink, but I take a drink once in a while if I go to parties. Drinking is not my thing, you understand. I hate it. Do you understand, I get sick.

Q Are you still enrolled in the VA program?

A No, I have been drug-free since November of last year.

Q Can you describe the process by which you left the VA program?

A Well, I asked to be detoxed about a year or maybe a year and a half before I had left, and they -- it took them about a year, a year and a half to detox me and

after that I was drug-free. But I continued to go back and forth to give the urine, even though I was drug-free.

Q You just went back to give the urine and left?

A Just to keep in contact, give it.

Q Did you receive any counselling?

A Yes, I asked for that and they always have time for that.

THE COURT: Let me get this straight: when did you stop? Did there come a time that you were not enrolled in the VA program, or isn't that formal?

THE WITNESS: Well, I haven't been back there like that in maybe three months now, but my factor thing is that I have been detoxed, drug-free, since November.

THE COURT: November of last year?

THE WITNESS: '73, right.

THE COURT: And about a year before that you asked to get off of it?

THE WITNESS: About a year, year and a half, I was in no hurry to come down at the particular time.

THE COURT: And they detoxed you over that period of months?

THE WITNESS: Yes.

THE COURT: They slowly reduced the dosage?

THE WITNESS: Yes.

THE COURT: Over how long a period of time did they do the reducing of dosage?

THE WITNESS: About a year, year and a half.

You see, you had to go before a board and they have to approve it.

THE COURT: And you went before the board and you were approved?

THE WITNESS: yes.

Q Mr. Beazer, have you used any illegal drugs since you have been detoxified?

A No.

Q Are you currently employed?

A Yes, I am.

Q Who is your employer?

A Wildcat Service Corporation.

melt 2 Beazer-direct

Q What is your position there?

A I'm a deputy division chief.

Q What is your salary?

A $15,000.

Q Can you describe to me first what the Wildcat Service Corporation does and then what your duties are?

A Wildcat Service Corporation hires ex-addicts and ex-convicts on a transitional basis. We try to give them employment so they can establish some type of employment record, so at the end of six months they can go out in the outside world and compete.

We try to get them work ready, to get used to punching the time card, taking orders, stock, you know, getting their independence and their pride back. And my responsibility to them is to see to it that they carry out the contracts according to the Department of Public Works and we also have eight precincts that they work in.

THE COURT: You do what for them, you are a supervisor?

THE WITNESS: I am their supervisor. I have six supervisors underneath me, 18 foremen.

THE COURT: You are the top supervisor?

THE WITNESS: That's right.

THE COURT: Where are these people employed; under

contract with the City and so forth?

A Right, with the Police Department, with the Fire Department, with the Department of Public Works, with the Department of Education, Offtrack Betting -- we're all over.

Q How long have you worked for the Wildcat Service Corporation?

A Fourteen months.

MR. BALBER: It's been stipulated that Mr. Beazer was terminated effective November, 1971 from the Transit Authority.

Q Did you have employment immediately after being terminated from the T.A.?

A No, I had to go on Welfare, I couldn't even get unemployment

Q How long were you on Welfare?

A Two or three months.

Q And then what happened?

A Then I went on to apply for a job with the Veterans Administration as a counselor and I got that job.

Q How long were you in that position?

A I stayed as a rehabilitation technician for about a year.

Q How much did you earn in that position?

A I think between 5 and 7 thousand.

Q And you said you worked for about a year?

A Yes.

Q And what were your reasons for leaving?

A I went to get a better job, more money, I went to Addiction Research and Treatment Corporation. And I was hired as their intake supervisor.

Q What does an intake supervisor do?

A My job was to see all participants came on the job properly, in other words, all the FDA rulings were adhered to, they was drug addicts, they was two years on drugs, they had dirty urine and they needed help.

Q And how long did you stay in your ARTC job?

A Stayed there a year and I left to come to Wildcat for advancement.

Q Did you leave because of any disciplinary action?

A No, I can go back there.

THE COURT: What did you make there?

THE WITNESS: I made $10,000 there.

THE COURT: What were you making at the Transit Authority?

THE WITNESS: I think $7,000.

Q Excuse me, how much were you earning at the Transit Authority?

A I'm sorry, at the Transit Authority I think I was

making $11,000 at that time. Or more. Plus my pension and hospitalization and all the good things that go with it.

THE COURT: You say more, what were you making?

THE WITNESS: I'm saying I was making $11,000 but I had a pension, I had hospitalization, I had quite a few things going for me working for the City that I don't have on these other jobs th at I had.

THE COURT: Do you -- can you evaluate the pension?

THE WITNESS: I lost my pension, I don't know, and I was there eleven years, to add this time to it I would only have a few more years to retire, that's gone. My hospitalization which I can go to any doctor when I'm ill, I lost that because now I have to pay for it. Just the idea of working for the City government for loans or advancements to get ahead in any endeavor I take, finding out that I got fired from the Transit just turned people off.

MR. BALBER: That concludes our direct examination of Mr. Beazer.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

CARL A. BEAZER, et al.,

Plaintiffs,

-against- : 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

----------x

January 13, 1977
9:30 a.m.

BEFORE:

HON. THOMAS P. GRIESA,

District Judge.

A P P E A R A N C E :

ELIZABETH DuBOIS, ESQ.,
ERIC D. BALBER, ESQ.,
MARK MORRILL, ESQ.,
Attorneys for plaintiffs

EDWARD W. SUMMERS, ESQ.,
GILBERT T. DUNN, ESQ.,
Attorneys for defendant

C A R L A. B E A Z E R, the plaintiff herein, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORRILL:

MR. DUNN: Your Honor, I have an objection, may I be heard?

THE COURT: All right.

MR. DUNN: I object, your Honor, to the reopening of this trial by the taking of this witness' testimony particularly in view of the fact that the record on appeal is being assembled and will be transmitted to the Circuit Cout tomorrow.

Additionally, I question whether this court has jurisdiction to proceed while an appeal of your Honor's order --

THE COURT: The objections are overruled. Proceed.

MR. MORRILL: I expect to be very brief.

Q Mr. Beazer, the record in this case shows that during the time you were employed by the Transit Authority you received two promotions.

Now, is there a physical examination involved as part of the promotion process in each of those instances?

A Yes, there is.

Q When you were instructed to report for the physical exams for those promotions, were you fearful that your drug addiction would be discovered?

A No, not really.

Q Why weren't you afraid?

A Why wasn't I afraid?

Q That's right.

A Oh, all I had to do was abstain from drugs for about three or four days and it would be very easy for me to pass the physical.

Q Did you, in fact, do that before the physical?

A Yes, I done all occasions.

Q Do you have recollection of other physical exame --

THE COURT: Did they take a urinalysis of those exams?

THE WITNESS: Yes, they did.

MR. MORRILL: To clarify the record, your Honor,

I believe before Mr. Beazer went into treatment he did have these physical exams and there was a urine specimen taken but the T.A. at that time was not testing for drugs. They were testing for things like blood sugar.

THE COURT: All right.

Q Mr. Beazer, do you recall having physical exams at times other than the promotional?

A Yes, I believe I had some periodic exams during the time I was working for the Transit.

Q But you don't have recollection of the specific dates?

A No, I don't remember.

Q Just to clarify the reocrd, Mr. Beazer, at the time of those physical exams, you were a heroin addict, is that correct?

A That's correct.

Q On every occasion when you had a physical exam, did you follow the same procedure of abstaining from drugs to beat the exam?

A Yes, I did.

Q To your knowledge was your addiction discovered during the course of any of those physical exams?

A No, I would have been fired.

Q Mr. Beazer, the Transit Authority has submitted

a report to this court in which it says that you were scheduled for a physical exam in May of 1971 which, to refresh your recollection, is around the same time that you went to the Veterans Administration Hospital.

Do you recall being scheduled for that physical exam?

A No, I don't.

Q Try and think back and recall your state of mind at that time. What would you have done if you had been scheduled for a physical exam?

MR. DUNN: I object, your Honor.

THE COURT: Sustained.

Q Mr. Beazer, in May of 1971, if you remember, were you aware that the Transit Authority had instituted a new type of urine testing to detect drug use in its employees?

A No, I didn't.

Q Did you go to the Veterans Administration Hospital at that time because you were afraid of a physical exam and you were afraid that your drug addiction would be detected?

A No. There was no way they could detect it.

Q Then why did you go to the Veterans Administration Hospital in, I believe the record shows, April of

1971?

A Well, at that time I was very depressed. I had problems with my wife. I just bought a home. She was running around with other men and I was just going off the deep end and I felt I needed some psychiatric care. Walking down the street, I would just break out in tears and I just felt I needed some help.

Being a veteran, that was the only place I could go for free.

Q You went to the Veterans Administration Hospital and what did you tell them?

A I told them just what I just said. I was very depressed. My wife was going through changes. I was beating on her and harassing her and I felt that I needed help and I asked them what could they do for me.

Q What did they do for you, Mr. Beazer?

A Well, they assigned me to the psychiatric ward on, I have forgotten what floor it was, for about two or three weeks.

Q At the same time, that same visit to the Veterans Administration Hospital, I believe the record also shows that you started methadone maintenance treatment.

How did it come about that you got onto the methadone program?

A Well, when I was up on psychiatric ward, through rumors I found out they had just instituted a program for drug addicted people so I asked, you know, how I could get on there. They explained to me what I would have to do, but I was very skeptical because I figured that if I went there eventually I would be caught, but they had told me, the doctors and everybody there insured me that my medical records are personal things and nobody should be able to get ahold of them.

Q When you say you were afraid you would be caught, what do you mean, Mr. Beazer, caught by whom?

A The Transit, I was going to lose my job.

Q Why did you think that you would lose your job?

A Because the way things are, they don't have no policy or anything for drug addicts and the minute you take -- I think it was seven days, five or seven days off, I am not sure, for illness, you have to bring in a doctor's certificate or a doctor's note stating the reason why you was out this length of time. I knew that would just ruin me.

Q Mr. Beazer, the record also shows that before you went into methadone maintenance you tried about five times short term detoxification programs. Now obviously that didn't work to cure your addiction because you kept

trying them.

MR. DUNN: I object, your Honor, as beyond the scope.

THE COURT: Yes, haven't we completed this?

You were allowed to reopen for a very limited purpose. That was to explore the inference that he went into the Veterans Administration to avoid the medical exam.

The only reason this evidence was reopened here is to explore that particular aspect of his individual situation.

MR. MORRILL: Your Honor, I just have three more questions to bring out the fact that he was deterred from going to treatment by the T.A.'s policy.

Q Mr. Beazer, did you ever think previously about going into a long term program?

A Constantly --

MR. DUNN: I object, your Honor.

THE COURT: Hold on.

A Constantly, I always wanted to go into a long range program.

Q Why didn't you previously?

A I would lose my job.

Q Was that for the same reason that you told us

about the Veterans Administration Hospital?

A Right.

Q Mr. Beazer, I just have one final question. If the Transit Authority had had a drug rehabilitation program or if they would have allowed you to go into one, would you have turned yourself in to the Transit Authority?

A I would have been the first one at the door.

Q Why was that?

A Because I had --

MR. DUNN: I object, your Honor.

THE COURT: Overruled.

Q You can answer.

A You want to know why I would have went into it? Well, as you can see from my life here, I have been constantly trying to stop using drugs and when I got into the Transit Authority I didn't have a high school diploma and I was up and coming. I made a few promotionals and I was scheduled for the dispatcher's test and for a man without a diploma, I was on my way to the top, I felt anyways, and I didn't want anything to interfere with that.

MR. MORRILL: I have no further questions of this witness.

THE COURT: Any questions, Mr. Dunn?

CROSS EXAMINATION

BY MR. DUNN:

Q Mr. Beazer, when did you become --

THE COURT: We have that in the record, 1966.

Q At that time -- you stated in your direct testimony that you had taken periodic examinations.

Will you tell me the dates of these periodic examinations that you had taken?

MR. MORRILL: Your Honor, I object. The witness testified specifically that he did not recall dates.

THE COURT: He can be asked. Overruled.

A Well, I feel that it was at least five times or so. Just exactly what dates they was, but two dates I know of, I am not sure of but I know at two times during the times I was promoted I took -- when I went from porter to conductor I took a test and then that was an open competitive test which is required by the city. I didn't take a promotional test, I took an open competitive test, which everybody else had to do without any consideration.

Then for conductor to tourman the same thing again. Those two times I know of for sure.

Q How many periodic examinations did you take after you became a tourman?

A After I became a tourman, I am not sure if I

took any. I tell you I don't remember. It's been quite a while, sir.

Q Is it your testimony that you were screened for drugs during these periodic examinations before?

A I don't even know.

THE COURT: He never so testified.

Anything else?

MR. DUNN: No, I have no further questions.

THE COURT: All right, you may step down, Mr. Beazer.

THE WITNESS: May I say something?

THE COURT: Yes.

THE WITNESS: I would like to say to you and the court that I appreciate the time that you have taken in this matter and that my whole future, my life is standing right here before me.

During the time that I have abstained from drugs, I went a long ways, Mr. Dunn. I am part of the community planning board. I work as a volunteer for Red Cross and I have done a lot of positive things and I hope this court takes these things into consideration because my life is standing right here. It can be ruined.

Thank you, sir.

THE COURT: All right, Mr. Beazer.

(Witness excused.)

CARL A. BEAZER, et al, 195

Plaintiffs

-against- 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,

Defendants

October 24, 1974
11:00 a.m.

PRESENT:

MR. DALTON, ESQ.
MR. BALBER, ESQ.
MR. MORRILL, ESQ.
MISS DUBOIS, ESQ.
MR. MELTSNER, ESQ.
Attorneys for plaintiffs

MR. SUMMERS, ESQ.
MR. DUNN, ESQ.
Attorneys for Transit Authority

MISS GOLD, ESQ.
Assistant Corporation Counsel for
Civil Service Commission
MR. ROSKIN, ESQ.

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* * *

ALFRED A. CAVE, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MISS DUBOIS:

Q What is your present position?

A Unit director of the Brooklyn Wildcat Service Corporation.

Q How long have you been serving in that position?

A For a year.

Q And prior to that, what was your occupation?

A I was an Army officer in the grade of major. I retired in June of last year after twenty-four years of active duty.

MR. SUMMERS: We are not certain what the witness is saying from this distance, your Honor.

THE COURT: You will have to speak a good deal louder.

What's the organization you work for; what's the official name of that?

THE WITNESS: Wildcate Service Corporation.

THE COURT: And your title is what?

THE WITNESS: Unit director of the Brooklyn unit.

BY MISS DUBOIS:

Q Would you briefly describe your major responsibilities during your 24-year Army career?

A Yes. I served as an enlisted man for 10 years in the Signal Corps as a computer repairman and microwave repairman. Then I was commissioned as a first lieutenant and I served mostly during the next 14 years as a commanding officer of companies, batallions and also as a group staff officer.

Q Would you briefly describe the duties of your present position?

A I'm the unit director of the Brooklyn unit, the

Brooklyn unit have right now approximately 375 former addicts and we provide transitional employment for these former addicts by contracts with the City and the federal organizations of Brooklyn and Queens unit to provide services in about 43 different categories.

Q And how many former addicts do you have in the Brooklyn unit?

A About 375.

Q Do you have in addition, a professional, executive staff?

A I have 67 either professional or managerial staff in addition to the 375 former addicts.

Q Do you know the plaintiff Carl Beazer?

A Yes, I do.

Q In what capacity?

A Carl Beazer is on my budget line as an assistant division chief, but actually he is the acting division chief of my Alpha or "A" division.

Q How many divisions do you have?

A I have four divisions.

Q Is he then a member of your professional staff?

A Yes, he is.

Q How is your professional staff selected?

A On merit only. I have professional staff members

and psychological areas, in the management areas and in the counseling areas.

Q Is your professional staff limited to persons with addiction histories or are such persons favored in any way in the selection process?

A No, they are not favored, in fact there are only five employees on my professional staff who have an addiction history that I know of.

Q When did you learn of Mr. Beazer's addiction history?

A In July of last year, when I was hired as the unit director, we had not opened our office in Brooklyn at that time. Mr. Beazer was already on board. He was hired by my immediate supervisor, Mr. Ken Marian. Mr. Beazer opened up with me, the office on Pearl Street in Brooklyn and we worked very close together because at that time I only had five staff members.

During this period I would say from July until approximately October, is when I found that Mr. Beazer was a former addict himself.

Q How many division chiefs do you have?

A I have eight people who perform division chief or assistant division chief-like duties. It depends on where they work and which borough as to which title they

occupy.

Q How many of your division chiefs have a drug abuse history?

A Only Mr. Beazer.

Q And what is the background of your other division chiefs?

A Two of my division chiefs have their masters in business, three of them have their degrees in sociology, the other two I think have I think some college and working in the business area.

Q And what are Mr. Beazer's responsibilities as a division chief?

A Mr. Beazer's responsibility is to manage the maintenance service division which we perform maintenance services in the court buildings in downtown Brooklyn and in the precincts in Brooklyn. Prior to two weeks ago, Mr. Beazer also was responsible for the same duties for the Queens borough, but since then I have opened up a sub-office in Queens and he now operates only in Brooklyn.

Q Do any members of your professional staff work for Mr. Beazer?

A Yes, he has four supervisors who work for him to assist him in supervising approximately 85 former addicts.

Q Are the supervisors former addicts?

A On my staff of 23 supervisors, only one are former addicts, to my knowledge.

Q And the supervisors are part of your professional staff?

A Yes.

THE COURT: Do your people maintain the City Office Building over in Brooklyn?

THE WITNESS: Yes, sir.

THE COURT: Like what, City Hall?

THE WITNESS: Not in Brooklyn. We maintain the City Hall -- not completely maintain it, we supplement in the court buildings in Brooklyn.

THE COURT: What court buildings?

THE WITNESS: Supreme Court, Family Court, Civil Court and I'm not certain, I think there are four buildings in Brooklyn.

THE COURT: Do they have a regular maintenance staff?

THE WITNESS: They have a regular maintenance staff, but most of them are understaffed and my men provide back-up service to the regular Civil Service group.

THE COURT: Do you do that in Manhattan?

THE WITNESS: Not my group, but they perform the same duties, the Police building back here has former addicts from Wildcat working there.

THE COURT: What about compensation? I'm thinking of bringing you into this building.

THE WITNESS: I would be glad to refer Mr. Peter Cove, who is the director of the Manhattan unit, to the custodian of this building. The way it works --

THE COURT: How do they work it out on the budget?

THE WITNESS: The Department of Public Works have a contract with Wildcat, and they pay Wildcat Services Corporation $1.10 an hour for the services received from Wildcat.

The other wages that makes up the employees' salaries, of the starting salary of $95 a week, come from grants from the Department of Employment of the City and also from the Social Security Supplementary Diversion, which used to be the Welfare Diversion.

To explain it to you --

THE COURT: Do you have any of this with the Federal government?

THE WITNESS: We have just now started doing contracts with the Federal government in Manhattan, and so far we had not prior to that, but we can do business with the Federal government.

THE COURT: Do your people perform better than the regular maintenance staffs?

THE WITNESS: Yes, of course.

THE COURT: The bright spot of the morning. We will take a recess.

(Recess taken.)

(Continued on next page.)

THE COURT: Let's get to the point quickly. What is it that Mr. Beazer is doing?

MR. DuBOIS: Yes.

Q How did Mr. Beazer come to hold his present position as director?

THE COURT: I really don't want to know how he came to hold it. I want to know what his promotion was based on. Howwell is he doing? That is the point.

THE WITNESS: As I stated before, he is the director, the supervisor of the maintenance service contract division.

THE COURT: I understand that.

THE WITNESS: I would consider him of the eight people who were performing the same kind of duty to be No. 1 or No. 2, in that area.

THE COURT: Is he prompt?

THE WITNESS: Yes.

THE COURT: Does he have regular hours?

THE WITNESS: Yes, sir, he is a non-exempt employee, but he does have regular hours.

THE COURT: Who does he report to? Does he report to an officer? What does he do?

THE WITNESS: Mr. Beazer is a supervisor. He is responsible for about 80, 90 people.

THE COURT: Does he go out?

THE WITNESS: He goes out in the field and visits. I have never had any problem out of Mr. Beazer. I would consider Mr. Beazer to be an outstanding employee in all phases. He has good rappart with the people.

THE COURT: Any problems with drinking or drugs or anything like that?

THE WITNESS: No, sir, not to my knowledge.

THE COURT: Any problem about honesty or anything along the criminal lines?

THE WITNESS: No, sir.

I think that is just about it.

MR. DuBOIS: Okay.

THE COURT: Any cross?

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* * *

FRANCISCO DIAZ, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORRILL:

MR. MORRILL: First I would like to point out that likewise with respect to Mr. Diaz a number of facts have been agreed upon.

THE COURT: I am certainly aware of that.

Q Mr. Diaz, are you a plaintiff in this action?

THE COURT: Of course he is. Let's go on.

Q Where were you born, Mr.Diaz?

A Spanish Harlem.

Q How much education did you have?

A I went to about two years of high school at the most.

Q Did there come a time when you were growing up, Mr. Diaz, that you became involved with drugs?

A Yes.

Q What drugs?

A Heroin.

Q Any other drugs?

A No.

Q How old were you then?

A I was about 15, going into 16.

Q Could you tell us how it happened?

A Well, I just got in with the wrong crowd day after day and I kept dipping in until I realized I was just in too deep.

Q How long were you an addict, Mr. Diaz?

A Well, until I got on the maintenance -- into the program about six years ago, that I'm on the program. Over 20 something years.

THE COURT: You were an addict for about 20 years?

THE WITNESS: Yes, about 18.

Q During those 20 years that you were addicted, did you ever try to get off heroin?

A Yes.

Q How many times?

A Approximately about four times.

Q Do you remember where you tried to do that?

A Yes, the first time was Riverside Hospital. I went there approximately three times. And the last time was Lexington, Kentucky.

Q What kind of programs were those, Mr. Diaz?

A Well, in Riverside Hospital I was working, so you go in there, you stay about two weeks, at the most a month. And they discharge you. That was their program at Riverside.

At Lexington, Kentucky, it was about 30 days and then you sign yourself out.

Q Mr. Diaz, each of those four times, three times that you went to Riverside Hospital and the one time you went to Lexington, Kentucky, when you came out of those hospitals did you return to the use of heroin?

A Yes, I did.

Q Did there ever come a time when you finally succeeded in stopping the use of heroin?

A Yes.

Q What made you do that, Mr. Diaz?

A Well, I was getting older. My wife, if I didn't stop, probably would have lost her. She was worried and I was just fed up with it. I wanted to just change my life, so I went on the methadone program.

Q Could you describe to us how you got on to the methadone program?

A Well, my brother-in-law told me about it, because he was on the program, and he said he was doing

good and why don't I get on it.

Q When was that, Mr. Diaz?

A That was six years ago. That was how long I have been in the program. A little bit more, because it took a while before they accepted me.

THE COURT: It is stipulated to be December 3, 1969.

Q Were you also an in-patient, Mr. Diaz?

A On the methadone?

Q Right.

A No. No, they build me up from the outside because I was working.

Q Did you see a counsellor during the course of your treatment?

A Yes, I saw a doctor. At first I saw a counsellor. Then a week later they send me a notice to appear at the clinic. That is when they start building me up. I used to go down every day.

Q Now, Mr. Diaz, since the time you have been in that program have you ever used heroin again at all?

A Yes, I did.

Q When was that?

A That was about the first week, when I was on the program.

cp8 Diaz-direct

Q What happened; would you describe it?

A You are not supposed to feel it and I was curious to see and I went and I took a shot, and I was pretty well disgusted with it because I didn't feel nothing. I wasted my money, and since that time, until -- well, I say a couple ofyears, I did try cocaine.

Q When was that?

THE COURT: When was the cocaine?

THE WITNESS: About, I'd say, about two years. That is when I was -- roughly, maybe, about twoyears. I can't swear to it, but that is when I was out of work. I hurt my back and --

THE COURT: That would be in about 1970?

THE WITNESS: Yes, around that time. I might be mixed up.

Q Would you describe the circumstances under which you tried cocaine?

A We all was in a party and there was some gentleman there and he had it and he was offering. I hesitated: "I won't fool aroundwith no habit."

He said, "It is not habit-forming," and the most I took was four or five blows, as they are called, snorts. I didn't feel nothing.

Q Other than that one time that you tried cocaine

and that one time when you were on the first week of the program that you tried heroin, have you used any other drugs?

A No.

Q At the time you tried cocaine, Mr. Diaz, did your methadone program know about it?

A Yes, they found it in my urine specimen and my counsellor called me in and I admitted to him. Then about two weeks later the urine kept coming back dirty.

Q What were the circumstances -- you said that you had dirty urine on more than one occasion?

A Yes.

Q And the first occasion was the time that you had tried cocaine once?

A Yes.

Q Would you describe to us the second occasion on which you had dirty urine?

A That is the time which I hurt my back and I went to the clinic -- but at that time Ididn't pay no attention to it -- and they gave me some pills, so I was taking them and everytime I went to give my specimen the counsellor kept calling me in and told me, you know, "Your urine is dirty."

I told him, "I haven't touched it." I'm telling

the truth.

THE COURT: This was this incident when you took the cocaine at the party; right?

THE WITNESS: Yes, sir.

THE COURT: And your urine specimen was dirty; right?

THE WITNESS: Yes, sir.

THE COURT: And then the urine specimens kept being dirty; right?

THE WITNESS: Right.

THE COURT: But it wasn't from the cocaine?

THE WITNESS: No. The pills that the doctor gave me at Beth Israel. But I didn't know at that time, but they kept calling me down. They finally -- it went on about almost two weeks or maybe better. And then finally my wife told me, she says, "Wait a minute. What about those pills that the doctor gave you?"

I said, "Yes, that may be."

I took the pills down to the clinic. I showed them to the nurse and the nurse says, "Yes, that is where you are getting" -- they call it, I think it is quinine or something. I'm not too sure. And the nurse says, "That is where this is coming from," and after that they never call me back.

Q Fach time during that period when you were having trouble with your back and you were taking the pills, each time your urine came back dirty, did your counsellor then call you in and talk to you about it?

A Yes.

Q Mr. Diaz, do you drink at all now?

A Yes, I have a few drinks.

Q About how many?

A Well --

Q How often?

A I always have my beer with my lunch. That is it definitely. Then, after work the fellows and I sometimes -- it all depends what time I work. I start at 10 in the morning. We work until 6.30. We will stay down and have a couple of more beers and then from there I go home.

Q Do you drink on weekends?

A Yes, when we go to the parties we have a couple of shots of Scotch. The fellows get together.

Q Have you ever had any trouble controlling your drinking?

A No, never.

Q Did your counsellor on the program ever talk to you about drinking?

A Yes.

Q Did your counsellor ever talk to you about having redeyes?

A She told me that I had to explain that to her. I tried to explain it to her that the job I do is sheet-metal. We had a sanding belt. When you use sand there is a fine dust that comes off. They even tell us to wear the goggles. A lot of times we cannot wear goggles because they fog up. It is supposed to be a safety rule. When we don't wear it the dust comes up and a lot of times your eyes are red. She questioned me about it and I said that is what it is.

Q Are you working now?

A Yes.

Q Could you tell us about your present job?

A I work in Duvenoy's Bakery. That is in White Plains. I do porter's work. I clean all the machines and my job is to keep the shop clean.

Q Approximately how much are you earning a year?

A I make $4.42 an hour. About maybe, $7000, roughly.

Q Have you had other jobs before the bakery?

A Yes. I worked for -- you want me --

Q Yes.

A Yes, I worked for Customized Steel. They moved

out of the State. I worked for Pacemaker for a couple of months. Then I worked for Telesonic for 11 years. That is the job I had.

Q Which were the 11 years that you worked for Telesonic?

A I worked from, I started 1960, March 14, around there, that month, until about 1972, around there. 11 years.

Q What were you doing for Telesonic?

A This sheetmetal work. I cut, I bend to 45 degrees. It was a custom-made job, whatever the customer wanted made for him. It would come with a flat layout, like a blueprint. We followed it up. We cut the metal and we bent it. If they want 45 degrees or 90 degrees, whatever they want.

Q How did you come to leave Telesonic?

THE COURT: When were you employed by Telesonic?

THE WITNESS: From 1960, 11 years.

THE COURT: You needn't get into that. There is no question about whether --

MR. MORRILL: I wanted to bring out that there was time when he was unemployed.

THE COURT: Let's move along.

Q Could you tell the Court why you left Telesonic?

A I was the shop steward there and management and the boss wanted me to go on their side and I just couldn't go against the men.

Q Were you fired?

A Yes, nine of us were fired.

Q Nine people were fired. Was there any indication that your job performance was not satisfactory.

A No. I had a dispute because they wanted me to get rid of men.

Q Were you unemployed for a period of time?

A Yes, while I collected Unemployment, Social Security for 26 weeks plus 13, 39 weeks.

THE COURT: When did you leave Telesonic, approximately?

THE WITNESS: The end of 1971, going into 1972, around very close to that.

THE COURT: All right.

Q Did you apply at one time for a job with the Transit Authority?

THE COURT: That is stipulated.

Q Would you describe to us what happened in connection with your job application?

THE WITNESS: It has been stipulated.

MR. MORRILL: There are some further details.

THE COURT: If you have something specific, all right.

Q Did you go to the Transit Authority for a physical exam?

A Yes, I did.

Q Could you tell us what happened when you were called down for a physical exam?

A I went down for the physical. They checked my urine. Then it came to a point where they had a form we had to fill which was whether you were arrested, whether you use alcohol, narcotics. I put down narcotics, heroin, and he looked at it and I had a letter from Beth Israel. The gentleman took it and then just when he finished the examination, that I passed, then he took me to see some head doctor. I don't know who the gentleman was.

THE COURT: Read the stipulation. I have got all this. I have got it in much more precise detail. What is the particular point you want to bring out that is not stipulated?

MR. MORRILL: There is a dispute between the parties.

THE COURT: Get to it.

Q Did the doctor tell you whether you would be accepted by the Transit Authority?

A No, he said using methadone -- he would not accept employees that are using methadone. They don't accept them.

THE COURT: I don't understand the reason for the dispute. Let us just ask Mr. Summers. Let's be realistic. Why was he rejected?

MR. SUMMERS: I think it is clear from the agreed facts that he informed the medical authorities he was a participant in a methadone program.

THE COURT: And that was the reason he was rejected, wasn't it?

MR. SUMMERS: Right.

MR. MORRILL: They have not until this moment stipulated that.

THE COURT: I think I get your point, but they have cleared it up.

MR. MORRILL: I have just a few more questions.

Q Mr. Diaz, are you still in the methadone program at Beth Israel?

A Yes, sir.

Q When did you last take methadone?

A This morning.

Q About what time?

A About 7 o'clock.

Q Do you know what your current dosage is?

A They were 100. Now it is down to 80.

THE COURT: 80?

THE WITNESS: 80 milligrams, I think.

THE COURT: At 7.00 a.m. today?

THE WITNESS: Yes.

Q Do you feel sleepy right now?

A No.

Q Did you feel sleepy this morning when you took it?

A No, sir.

Q Are you dizzy now?

A No, sir.

Q Were you dizzy this morning?

A No, sir.

Q Do you have a driver's license?

A Yes, I do.

Q When you filled out your application for a driver's license did you reveal your drug history?

A No, sir.

Q Could you tell us why you didn't?

A Because I figured they would not give me the license and I needed the car, you know, to go to work and so forth.

Q Do you have a family, Mr. Diaz?

A Yes, my wife, my two daughters, my son and my granddaughter, just born.

Q How long have you been married?

A April will be 21 years. This coming April, next year, 21 years.

MR. MORRILL: I have no further questions, your Honor.

THE COURT: You have been on methadone since 1968; right?

THE WITNESS: Yes, sir.

THE COURT: You have been on for about six years?

THE WITNESS: Yes.

THE COURT: How were you employed in 1968?

THE WITNESS: I was in Telesonic.

THE COURT: You were a sheetmetal worker?

THE WITNESS: Yes, sir.

THE COURT: That was your sheetmetal job?

THE WITNESS: Yes, with Telesonic.

THE COURT: And you kept that until 1973; right?

THE WITNESS: Between 1971 -- no, '71 to '72, around there. That is when we all got fired.

THE COURT: Then you got another job?

THE WITNESS: Yes, when I left there I went to

work for Pacemaker for a couple of months.

THE COURT: Still as a sheetmetal worker?

THE WITNESS: Yes, a competitor.

THE COURT: Then you finally terminated your sheetmetal work and you have been working for the bakery since 1973?

THE WITNESS: Yes, this year, four months. I started working there July.

THE COURT: Did you have any problems with your sheetmetal work resulting from the methadone?

THE WITNESS: No.

THE COURT: Did you feel any excessive sweating?

THE WITNESS: No.

THE COURT: Did you have constipation?

THE WITNESS: No.

THE COURT: Did you take a laxative?

THE WITNESS: No. Excuse me, I'll rephrase that. A couple of -- once in a while I get constipulated. I used to tell the nurse. Every once in a while they give me a pill.

THE COURT: How many times was that?

THE WITNESS: On the program, maybe three times.

THE COURT: Three times?

THE WITNESS: In six years that I told them.

THE COURT: And then you take a laxative or go for a pill?

THE WITNESS: A red pill. I don't know what it is.

THE COURT: Any problem about drowsiness? Have youfelt any effects of methadone?

THE WITNESS: No.

THE COURT: What do you feel when you take methadone?

THE WITNESS: I feel like the way I wanted to feel, that I never felt before. I feel normal.

THE COURT: What kind of a feeling would you get from taking heroin?

THE WITNESS: When I take heroin I feel drowsy, sluggish. I feel lazy, No. 1, and --

THE COURT: Did you have a pleasant feeling from heroin?

THE WITNESS: Well, yes.

THE COURT: That is the reason you took it?

THE WITNESS: Right, like you don't care, you don't want to bathe. You lose your appetite. You don't want to shave. You don't even care for sex when you use heroin.

THE COURT: Have you felt any of those effects

from methadone after you got into the program?

THE WITNESS: When I got on the program everything changed. My sex life changed. My eating habits. My wife is much happier than before.

THE COURT: I am asking whether while you have been on the methadone program have you felt any of the effects that you described that would come from heroin?

THE WITNESS: No, sir.

THE COURT: You don't have any particularly pleasant sensation when you take methadone, a kind of drug sensation?

THE WITNESS: No, sir.

THE COURT: All right.

You don't feel drowsy or lazy?

THE WITNESS: No; I don't feel lazy. That is why I work so long.

THE COURT: When you were at the sheetmetal company, how many hours did you work?

THE WITNESS: That was not more than nine hours tops at the sheetmetal. I worked there 11 years. This job is the most overtime I ever worked in my life because it is a bakery and they are open almost all around the clock. I can't leave until everything is clean. One day I'm off and one day he is off. When I'm off he has

got to do double work. When he's off I've got to do it. We do everything, trucks --

THE COURT: How long are you married?

THE WITNESS: 21 years.

THE COURT: Do you have any children?

THE WITNESS: Yes.

THE COURT: How many children?

THE WITNESS: Two daughters and a son.

THE COURT: How old are your children?

THE WITNESS: My daughter just hit 18. My daughter just hit 17, and my son just hit 13 this month.

THE COURT: Do you see other people where you are at the Beth Israel methadone program?

THE WITNESS: Yes, sir.

THE COURT: You see other people at that program?

THE WITNESS: I see them in and out.

THE COURT: Do you know them at all? Do you know what happens to them?

THE WITNESS: I say hello to them, good-bye. A lot of them are telling me they are working. Some are looking for a job. Some tell me they went to that wildcat that they spoke about. That is about it.

THE COURT: According to what you say you are doing pretty well in this methadone program; right?

THE WITNESS: I'm doing terrific.

THE COURT: How about the others -- how well are they doing, as far as you know?

THE WITNESS: As far as I know, they are doing good. I mean, the ones that I know. I'm not talking for all of them. The ones that I know, that I speak for, they are all doing all right.

THE COURT: Are any of them not doing well?

THE WITNESS: I guess so.

THE COURT: What happens to the ones not doing well?

THE WITNESS: As far as I know, the ones that drink too much, they come back in the hospital.

THE COURT: Some of them drink too much?

THE WITNESS: Yes, they put their mouth in the -- they put them in the hospital for two weeks to break them away from the drinking.

THE COURT: What causes them to drink?

THE WITNESS: I don't know.

THE COURT: Does methadone increase your desire to drink at all?

THE WITNESS: No, not mine. Because they tell you it is no good for you.

THE COURT: I mean, has it increased your desire?

THE WITNESS: No, it has not increased my desire.

THE COURT: Aside from drinking, why don't the people do so well on the methadone program; what is happening to them?

THE WITNESS: They give them more counselling and they check their urine more. Sometimes they do it every day. Then you got to come down every day for your medication when they see that you are doing something wrong.

THE COURT: Anything else?

MR. MORRILL: May I place on the record the fact that I don't believe that Mr. Diaz testified to a record of continuous employment. I would just like to make that clear; that he did testify that he was unemployed for a period of time.

THE COURT: Yes.

MR. MORRILL: I have no further questions.

THE COURT: Mr. Dunn.

MR. DUNN: Your Honor, since Mr. Diaz has admitted that he made a statement on his application for a motor vehicle operator's license --

THE COURT: I don't add anything.

MR. DUNN: I was going to offer it, if counsel will stipulate that it would be received.

THE COURT: I have got the stipulation. Anything else?

MR. DUNN: No, your Honor.

THE COURT: Next witness.

slp 849

CARL A. BEAZER, et al,
Plaintiffs,

vs. 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

New York, February 3, 1975.

Trial resumed.

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* * *

FRANCISCO DIAZ, recalled.

THE COURT: Mr. Diaz, you are still under oath.

MR. MORRILL: Just to save time, I would like to read one question and answer.

DIRECT EXAMINATION

BY MR. MORRILL:

Q Mr. Diaz, I would like to refresh your recollection by reading to you some of your previous testimony, at page 251 of the transcript of the trial held on October 24, 1974:

"Q Mr. Diaz, do you drink at all now?

"A I have a few drinks.

"Q About how many?

"A Well,--

"Q How often?

"A I always have my beer with my lunch. Then after work the fellows and I sometimes, it all depends what time I work, I start at 10 in the morning, we work until 6:30, we will stay down and have a couple of more beers, and then from there I go home.

"Q Do you drink on weekends?

"A Yes, when we go to the party we have a couple of shots of scotch, the fellows get together."

Mr. Diaz, you refer there to drinking beer during the week. Do you ever drink scotch during the week?

A No, not during the week. Sometimes on Fridays, but now since they changed my schedule again, so now I don't bother with Friday, because I get home at 1:00, 1:30.

Saturday I get up at 10, I go down and fix my car, check it up for the week. Then when I go back up we have a couple of drinks, and then I can't drink much, because I go to work Sunday, because I have Tuesday and Saturday off. So I go right back to work Sunday.

Q The only time you drink scotch then is on non-working days?

A Yes.

Q Do you drink scotch every time you don't work?

A No, not all the time.

Q Who else is present usually when you drink scotch?

A My wife, my friends, the one who was helping me with my car, sometimes the neighbors.

Q Do you have any idea how many scotches you might drink at one of those gatherings?

A Well, maybe four.

Q Can it be five?

A Four or five. My wife is present half of the time.

MR. MORRILL: I have no further questions.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. DUNN:

Q Mr. Diaz, do you recall being examined at the

medical clinic at Beth Israel in April, 1973, for any medical purpose?

A The only thing I can think of is my back when they gave me the pills.

Q Did you have a yellowing of your eyes at one time?

A When I was a kid, 18.

Q Sir?

A When I was a kid, when I was 18 years old, a slight touch of it, I was 17, 18 years old.

Q Did you have jaundice?

A No, not now. I had a touch of it when I was 18.

Q Did you ever mention that to a doctor at Beth Israel?

A Yes.

Q In 1973?

A The only time when I hurt my back I worked. That is the only time I can remember I seen the doctor. They gave me those pills.

Q Did you ever state to a doctor at Beth Israel in 1973 and that for the five years prior to that examination you had been drinking six or seven shots of scotch?

A To tell you the truth, I cannot remember. They tell us in the program don't drink too much. They also

say that to all the patients as far as I know, that is when they told all the patients don't indulge in alcohol.

Q Do you remember being asked by a physician how much you drank in April, 1973?

A No, sir, I don't remember.

Q Did you know a nurse by the name of Ellen Volco?

A No, not by name, maybe by looks.

Q Did she ever discuss whether or not you had a drinking problem, or any nurse at Beth Israel?

MR. MORRILL: Objection.

THE COURT: Overruled.

A Not as far as I know, not as far as I can remember.

Q Did your counselor ever discuss drinking with you?

A They told me the same thing.

Q What did they say?

A Don't drink, overextend, it is no good, they don't mix. They always warn everybody about that.

Q Did they ever suggest to you that you were drinking too much?

A No.

Q Did they ever send you for a liver function test?

A Liver function test? No. I just went for one the other day.

Q And prior to that did you ever take a liver function test?

A Not as far as I know. They took my blood.

Q At the time of your admission we have a liver function test. But between the time you were admitted to the program in 1967 and last Thursday did the program ever administer to you a liver function test?

A They took my blood, the last time they seen me was last Thursday.

Q In October, 1972, did your counselor ask you any questions with respect to whether or not you were using excessive amounts of alcohol?

A 1972?

Q 1972.

A Not as far as I can remember, sir. That is the truth. Not as far as I can remember.

Q Do you recall being sent to the medical clinic for a work-up to determine how your liver was functioning in 1972?

A No, sir, not as far as I can remember.

MR. DUNN: No further questions.

REDIRECT EXAMINATION

BY MR. MORRILL:

Q Mr. Diaz, do you know how a doctor administers a liver profile?

A No.

Q Do you know what kind of test it is?

A The only one I understand Thursday when they told me to take a test if my liver was damaged.

Q What kind of a test was that?

A They just took my blood.

Q Did they do anything else?

A No, they just took my blood.

Q Have they taken your blood on other occasions since you have been in the program?

A Yes, every year they take my blood. I think it is about since I have been on the program every year.

MR. MORRILL: Thank you.

THE COURT: All right, Mr. Diaz, thank you.

CARL A. BEATER, et al, 195

Plaintiffs

-against- 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,

Defendants

October 24, 1974
11:00 a.m.

PRESENT:

MR. DALTON, ESQ.
MR. BALBER, ESQ.
MR. MORRILL, ESQ.
MISS DUBOIS, ESQ.
MR. MELTSNER, ESQ.
Attorneys for plaintiffs

MR. SUMMERS, ESQ.
MR. DUNN, ESQ.
Attorneys for Transit Authority

MISS GOLD, ESQ.
Assistant Corporation Counsel for
Civil Service Commission
MR. ROSKIN, ESQ.

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* * *

JOSE REYES, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORRILL:

Q Mr. Reyes, where were you born?

A Farjaodo, Puerto Rico.

Q When did you come to New York, Mr. Reyes?

A In 1946.

Q How old were you?

A I was one year old, about.

Q Where did you grow up?

A Astoria, Queens, in a public housing project.

Q How much education did you have?

A I graduated from high school and have attended New York City Community College for one semester.

Q Did you serve in the Armed Services?

A Yes, the U.S. Air Force.

Q What was your job in the Air Force?

A My title was Air Freight Specialist. My duties were to load the aircraft with cargo and I was responsible to make sure the aircraft was balanced properly to take off.

Q During the time you were in the Air Force, Mr. Reyes, were you ever subject to any disciplinary proceedings?

A Yes, sir, in England.

Q Describe how that came to pass?

A I was out with some friends or two girls and another air man and we were drinking and we got picked up at the air base.

Q What was the result of being picked up at the air base?

A As a result of that I spent four months in the stockade.

Q After you were released, did you remain in the Air Force?

A Yes, sir.

Q Did you receive any promotions?

A Yes, three promotions.

Q What was your rank when you finally left the Air Force?

A E-4 Sergeant.

Q When you left the Air Force, Mr. Reyes, what kind of discharge did you receive?

A It was under honorable conditions.

Q At the time of your discharge were you told that a discharge under honorable conditions was in any distinguishable from an honorable discharge?

A No, sir, the base commander told me it was not different.

Q Did you think that when you first got it that it might be different?

A After I left the base.

THE COURT: Is it different?

THE WITNESS: Yes, sir, your Honor.

MR. MORRILL: Yes,sir, your Honor.

Q You did think it might be different and you asked your commander about it, you say?

A Yes.

Q What did he tell you?

A He said there is no difference.

Q Did there come a subsequent time that in fact you found out it was different and it might not be quite as good?

A Yes. When I was processed I met a few other airmen being processed at the base, Air Force people,

and they had their DD Form 214, their discharge form, which said "Honorable," but mine said "Under Honorable Conditions."

Q Did you ever tell anybody that you had an honorable discharge?

A Yes, sir.

Q Who did you tell?

A I have always, when I referred to my discharge, I have always referred to it as honorable.

Q Have you ever told the lawyers in this case during your deposition that you had an honorable discharge?

A Yes, sir.

Q Why did you do this, Mr. Reyes?

A Ever since I came out of the Air Force I have always mentioned that my discharge is honorable. I just -- I felt uncomfortable. I felt -- I was embarrassed to mention it. I just wanted -- I just didn't want to think about it or mention it to anybody, just forget about it.

Q Did you ever tell your wife about it?

A No, sir, not until Monday.

Q Did you ever change your discharge form to make it look as if it were an honorable one?

A Yes, sir.

Q To go back in time, Mr. Reyes, did there come

a time in your life when you became involved with drugs?

A Yes, sir.

Q What drugs did you use, Mr. Reyes?

A Heroin.

Q Did you use any other drugs?

A Some time in my past life I got together with other people. I might have tried a different kind of drug than that.

THE COURT: When did you start using heroin?

THE WITNESS: About when I was 14 or 13.

Q How old are you now?

A 29.

Q How did you come to become involved with heroin, Mr. Reyes?

A I grew up -- when I grew up it was something that you grow up into. I remember when I was eight or nine, I remember the older people I knew who was in drugs and who was not in drugs. You see, the people who are in drugs, they need the money and it is something that you look up to them and you tell yourself, "Some day I want to be like him. I want to have the clothes. I want to have the car."

Also, your friends are using drugs, their brothers are using drugs. Your mothers and fathers are.

You don't really believe it is that bad, not at that age.

THE COURT: This was about 14 years of age?

THE WITNESS: Yes, sir.

Q How long did you actually use heroin, Mr. Reyes?

A On and off from that time when I started, 13, 14.

Q For about how many years?

A Until I joined the methadone program, on and off a few years.

Q Is that ten years?

A Ten years.

Q Mr. Reyes, how did you pay for all the heroin that you were using?

A I worked. I have worked. I have always worked. I have held two jobs at times. My wife was working when I first met her. I have delivered Telephone Books. I have shined shoes. I have always worked.

Q Did you also work for the Transit Authority?

A Yes,sir.

Q Did there come a time in your life when you finally gave up the use of heroin?

A Yes, sir.

Q Could you tell us why you gave uA heroin?

A I was just married. My wife was pregnant and

I just thought about the future. I thought about my two sons and I just felt like it was, I just couldn't go through it no more. I knew how you can deteriorate. I didn't want my family situation to deteriorate like others I had seen, so I just got to the point where I felt, that is it, and I just stopped.

Q How did you stop?

A I applied to every program that I ever heard of and I waited until I was called by any program, a drug-free program, methadone, detox program. It so happened the Beth Israel program called me first and that is the first program I entered.

MR. MORRILL: I believe the record reflects that was in 1971.

THE COURT: Yes.

Q After you joined the Beth Israel program, did you ever use heroin again?

A Yes, sir, the first year, the first week when I started on the program they didn't start me on the blockage level where I wouldn't start to feel withdrawal pains. They started building me up on the low dosage until I got to this blockage level, so the first couple of days after they had given me my dosage I would go home and feel uncomfortable and I did use heroin.

Q Since these first few days, have you ever used heroin?

A No, sir.

Q Have you ever used any other illegal drugs?

A No, sir.

Q Are you working now, Mr. Reyes?

A Yes, sir.

Q What is your present occupation?

A I work for Mount Sinai Hospital as a Social Health advocate with the Social Service Department in the methadone program.

Q Would you describe for us your duties as a Social Health advocate?

THE COURT: You are a Social Health advocate?

THE WITNESS: Yes, sir.

THE COURT: How much do you get paid for that?

THE WITNESS: About $10,000.

THE COURT: What is your question?

Q I asked Mr. Reyes to describe for us his duties as a Social Health advocate.

A Iwork out the methadone program at Mount Sinai Hospital. I am sort of a liaison man between the professional staff, the psychiatrists and the patient. My job is to try to bring out -- make the patient feel more comfortable,

bring out the problems for the right person. I guide him to the right person and right agency. I sometimes accompany the patient to court on civil and criminal cases and let the Court know how the person is doing on the program and what services the program has. I try to find apartments for patients. I try to teach the patient how they can find apartments themselves. I work with the Welfare Department patients. I refer them to the welfare office. I let the patients know how they have to go about filing for anything or working with city agencies or government agencies, things like that.

Q Do you have contacts in some of these official agencies?

A Yes, sir.

Q Have any people at Mount Sinai where you are working urged you to go back to school, Mr. Reyes?

A Yes, my supervisor.

Q Have they told you why they think you should go back to school?

A Yes.

THE COURT: That is really not relevant.

You are prompt, are you not? Are there any problems about performing your present job?

THE WITNESS: No, sir.

THE COURT: Are you prompt on your job?

THE WITNESS: Yes, sir.

THE COURT: You have to report each day at a certain time?

THE WITNESS: Yes, sir, 9 o'clock.

THE COURT: What hours do you work?

THE WITNESS: 9.00 a.m. to 5.00 p.m.

THE COURT: What is your attendance record?

THE WITNESS: I think it is good.

THE COURT: How long have you had this job?

THE WITNESS: Since January, 1972.

THE COURT: So that is about two and a half years?

THE WITNESS: Yes.

THE COURT: How many times have you been absent?

THE WITNESS: In that time I guess I would say 15.

THE COURT: What?

THE WITNESS: 15 days.

THE COURT: Why was that?

THE WITNESS: For many reasons. I live in a one-family house that I rent from the Housing Authority and when we moved into the house there was no meter. When I called Con Edison somebody -- I was told somebody has to be there.

THE COURT: You don't have to go into all of that. Have you been absent some because you were taking care of your home?

THE WITNESS: Things like that, right.

THE COURT: Have you told the people at Mount Sinai about that?

THE WITNESS: Yes, sir.

THE COURT: And have you had any health problems that caused your absence?

THE WITNESS: Yes, sir.

THE COURT: What has that been?

THE WITNESS: I have had the flu.

THE COURT: The flu?

THE WITNESS: Yes.

THE COURT: Are you still on the methadone program?

THE WITNESS: Yes, sir.

THE COURT: Anything else?

MR. MORRILL: Yes, sir, your Honor.

Q Mr. Reyes, have you ever missed work because you were using drugs?

A No, sir.

Q When did you last take methadone?

A This morning, 8.00 a.m.

Q What is your dosage; do you know?

A I think it is approximately 40 milligrams.

Q Do you feel dizzy now?

A No, sir.

Q Do you feel sleepy now?

A No, sir.

Q Did you this morning when you took the methadone?

A No, sir.

Q I believe you said that you were married, Mr. Reyes?

A Yes.

Q Are you still married?

A Yes, sir.

Q How long have you been married?

A Since August, 1969.

Q Do you have any children?

A Yes, sir, two boys, one 7 and one 2-1/2.

MR. MORRILL: I have no further questions.

* * *

C A R O L Y N H A T Z I S, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

* * *

BY MISS DUBOIS:

Q Would you state your present occupation?

A I am a social worker employed for the Drug Abuse Control Commission and the FDA.

Q And what are your responsibilities in that position?

A I'm responsible for evaluating that methadone treatment programs are both in compliance with the law as

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well as the quality of treatment.

Q What was your previous position?

A I was social worker supervisor at Mt. Sinai Hospital's methadone program.

Q Do you know the plaintiff Reyes?

A Yes, I do.

Q How do you know him?

A Mr. Reyes was under my supervision for approximately two and a half years at Mt. Sinai.

Q What position did he hold?

A Social health advocate.

Q Was that position limited to people with former addiction histories?

A No.

Q Is that how he got the job?

A No. It was one area of concern, but it is not limited to that.

Q And what were his duties as social health advocate?

A As social health advocate he was responsible for working as number one liason between the staff, what you might call the professional staff and the client because of, number one, his knowledge of the community, and certainly his ability to speak Spanish, and his -- what we would hope

hope to be an understanding of the kind of cultural background and problems that our clients would have had.

Q Was his work closely supervised or was any of it independent?

A Although his work was -- I was responsible in terms of supervision as he progressed. He reached the point where there were many areas that he would tell me about but then would be responsible for carrying out on his own.

Q How would you assess his overall job performance during the two and a half years you supervised him?

A I'd have to say excellent. I think he is probably one of the better social health advocates in the whole program at the hospital.

Q What was your opinion regarding his honesty?

A I never had any reason to question it. He was from time to time responsible for sums of money that he would handle in his job and it was never a problem.

Q Was he promoted or considered for promotion on the basis of his performance?

A Usually, the position he is in is a one line position, so there is -- the only way he could have been promoted is if he had instead of a high school degree had a college degree. There was no area to be promoted to.

Q Did you encourage him to go on and get that?

A Yes, constantly.

Q Is there in any way in which to your knowledge hi performance was affected by his maintenance on methadone or prior addiction history?

A No, I can't recall any time when I --

MR. DUNN: Your Honor, I move to strike the answer. The witness is not competent to testify.

THE COURT: Overruled. Motion denied.

Q Was there any way in which to your knowledge his performance was affected by his maintenance on methadone or prior addiction history?

A Not to my knowledge. The whole time I don't recall any particular incident.

MR. DUNN: I'd like the objection noted on the record. I don't know if that was another question.

MISS DUBOIS: That was the same question.

THE COURT: That type of objection is overruled.

Q During the two and a half year period you supervised Mr. Reyes, did you ever have any reason to suspect that he was using illicit drugs of any kind?

A No, never.

MR. DUNN: Objection, your Honor.

THE COURT: Overruled.

Q Would you have had any basis for drawing a

conclusion as to whether a person you supervised as you did Mr. Reyes was or was not using illicit drugs?

MR. DUNN: Objection as to the form, your Honor.

THE COURT: Overruled. Can I ask a question?

A Do you mean, in other words, would my knowledge about drugs be such I could have recognized whether he was using --

Q Yes.

A Okay. I was of course -- from my position I was constantly in contact in the program with patients who entered the program using drugs and who from time to time were involved in continuing to use drugs and I was, I would say, fairly aware of what the physical effects, the outward physical effects would be and these were never noted and I never noted anything of this nature with Mr. Reyes, no.

MISS DUBOIS: Thank you, that's all I have, your Honor.

Norman B. Gordon
62-12 Cloverdale Blvd.
Flushing, New York 11364

Born: February 12, 1921

Academic Background	Major	Degree
Brooklyn College	Psychology	B.A. 1942
Harvard University	Psychology	1943*
New School for Social Research	Psychology	M.A. 1951
New York University	Psychology	Ph.D. 1957

*attended during military service, equivalent M.A. degree in Psychology

Experience

Present Position: Chairman and Professor of Psychology, Department of Psychology, Ferkauf Graduate School of Humanities and Social Science, Yeshiva University.

1960-1973: Associate Professor-Professor of Psychology, Department of Psychology, Yeshiva University. Research in perceptual-motor learning, assessment of human performance. Graduate courses taught have included: History and Theories in Psychology, Human Learning, Experimental Psychology, Statistics, as well as research seminars in Learning, Psychophysiological Techniques. Undergraduate courses have included Personality, Human Development, and Social Psychology.

1965-Present: Guest Investigator, The Rockefeller University. Engaged as Consultant and conducted research studies involving the assessment of performance of ex-addicts maintained on methadone as a treatment for heroin addiction, and in research on addictive disease.

1964-1966: Chairman, Department of Psychology, Ferkauf Graduate School of Humanities and Social Sciences, Yeshiva University.

1960-1965: Involved in the administrative reorganization of graduate psychology programs and administrative procedures at Ferkauf Graduate School, Yeshiva University.

1958-1962: Instructor-Research Associate, Albert Einstein College of Medicine. Research was concerned with problems in physician-patient relationships and family decision making in the face of serious and fatal childhood illnesses.

1957-1959: Lecturer in Psychology, Department of Psychology, Queens College, Flushing, New York. Offered courses in Personality Theory and General Psychology.

1951-1958: Research Psychologist and Branch Head, Human Engineering Department U.S. Naval Training Device Center, Port Washington, New York. Conducted and designed research on human performance and learning of aviation skills, including flight training, carrier landings, and accident analysis. Design of training aids and devices.

1946-1951: Employed in private industry as employee interviewer, and job selection, and training.

1947-1948: Lecturer, Psychology Department, Brooklyn College, Brooklyn, New York.

1942-1946: Served in the U.S. Army in the field of military classification and assignment.

Sponsored Research Projects

1973-present: Principal Investigator, "Effects of heroin abuse and methadone treatment," DA 00390 (NIDA).

1968-present: Principal Investigator, project entitled "Sleep, vigilance and their relationship to narcotic drugs." MH 15638 (NIMH).

1963-1967: Principal Investigator, project entitled "Sensory interaction and motor learning." MH 08087 (NIMH).

Papers Read at Professional Meetings

Appel, P. and Gordon, N.B. Proactive interference in rotary pursuit learning. Paper read at Eastern Psychological Assn. Meeting, April 1970.

Henderson, A., Nemes, G. and Gordon, N.B. Sleep and narcotic tolerance. Paper read to the Association for the Psychophysiological Study of Sleep, Sante Fe, March 1970.

Nemes, G., Gordon, N.B. and Henderson, A. A scaling system for the qualitative description of sleep EEG. Paper read at Association for Psychophysiological Study of Sleep, Sante Fe, March 1970.

Gordon, N.B. Reaction-time in methadone treated ex-addicts. Read at Eastern Psychological Association meeting, Washington, D.C., April 1968.

Henderson, A., Nemes, G. and Gordon, N.B. Sleep patterns in narcotic tolerance. Paper read at the Association for the Psychophysiological Study of Sleep, Boston, Mass. March 1968.

Gordon, N.B. Input, feedback and motor skill. Paper read at the Eastern Psychological Association meeting. New York City, April 1967.

Recent Publications

Gordon, N.B. Learning a motor task under varied display conditions. J. exp. Psychol., 1959, 57, 65-73.

Gordon, N.B. and Kutner, B. Long-term illness and the family. J. Health and Human Behavior, 1965, 6, 190-196.

Dole, V.P., Nyswander, M., Trigg, H., Gordon, N.B., and Warner, A. Methadone maintenance. A report of two years of experience. Reported to the Committee on Problems of Drug Dependence, N.A.S., N.R.C., 1966.

Gordon, N.B. and Gottlieb, M.J. Effect of supplemental visual cues on rotary pursuit. J. exp. Psychol., 1967, 75, 566-568.

Gordon, N.B., Warner, A. and Henderson, A. Psychomotor and intellectual performance under methadone maintenance. Reported to the Committee on Drug Dependence, National Academy of Sciences, National Research Council, 1967.

Gordon, N.B. and Warner, A. Supplementary visual stimuli and rotary pursuit performance. Perceptual and Motor Skills, 1968, 27, 815-825.

Gordon, N.B. Guidance versus augmented feedback and motor skill. J. exp. Psychol., 1968, 77, 24-30.

Gordon, N.B. Varied input stimuli and motor learning. J. Motor Behav., 1969, 1, 149-161.

Gordon, N.B. Reaction-time in methadone treated ex-addicts. Psychopharmacologia, 1970, 16, 337-344.

Gordon, N.B. Behavioral change in ex-addicts under methadone treatment. (in preparation).

Nemes, G., Gordon, N.B., and Henderson, A. A scaling method to describe the qualitative and quantitative aspects of sleep. (In press, 1973).

Babst, D., Newman, S., Gordon, N.B., and Warner, A. Driving Record of methadone maintenance patients in New York State. N.Y. State Addiction Control Commission, Albany, N.Y., Feb. 1973.

Gordon, N.B. and Appel, P. Performance effectiveness in relation to methadone maintenance. Proceedings Fourth National Conference on Methadone Treatment, San Francisco, 426-427, 1972.

Gordon, N.B. The functional status of the methadone maintained person, a chapter in Simmons, L.R. and M.B. Gold (eds.) Discrimination and the Addict, Sage Publication, Beverly Hills, Calif. (In press, 1973).

STATEMENT OF NORMAN GORDON, Ph.D.

Chairman and Professor of Psychology, Department of Psychology, Yeshiva University and Guest Investigator, The Rockefeller University

I am a clinical psychologist, and have devoted a considerable proportion of my professional career to the study of human psychomotor learning and performance. In recent years my attention has been directed specifically toward assessing the potential and actual performance of individuals who have histories of narcotic addiction and are maintained on methadone.

In the spring of 1964, I was asked to participate in forming a research group at the Rockefeller University devoted to the study of the effects of narcotics on performance and learning. This developed into a long-term research project, in which I was able to combine my activities at Yeshiva University with those at the Rockefeller University and obtain support from the National Institute for Mental Health and, more recently, the National Institute for Drug Abuse. This support has permitted us to conduct a variety of studies in which a whole range of behavioral investigations have been conducted or are currently under way. On the basis of these studies, which probably represent the most extensive efforts that have been undertaken to assess the functional performance of persons maintained on methadone, we have concluded that maintenance on methadone results in no physical side effects that present barriers to any vocational activities. The studies have been reported in the following papers and publications:

Henderson, A., Nemes, G. and Gordon, N.B. Sleep and narcotic tolerance. Paper read to the Association for the Psychophysiological Study of Sleep, Sante Fe, March 1970.

Gordon, N.B. Reaction-time in methadone treated ex-addicts. Read at Eastern Psychological Association meeting, Washington, D. C., April 1968.

Henderson, A., Nemes, G. and Gordon, N.B. Sleep patterns in narcotic tolerance. Paper read at the Association for the Psychophysiological Study of Sleep, Boston, Mass., March 1968.

Dole, V.P., Nyswander, M., Trigg, H., Gordon, N.B. and Warner, A. Methadone maintenance. A report of two years of experience. Reported to the Committee on Problems of Drug Dependence, N.A.S., N.R.C., 1966.

Gordon, N.B., Warner, A. and Henderson, A. Psychomotor and intellectual performance under methadone maintenance. Reported to the Committee on Drug Dependence, National Academy of Sciences, National Research Council, 1967.

Gordon, N.B. Reaction-time in methadone treated ex-addicts. Psychopharmacologia, 1970, 16, 337-344.

Gordon, N.B. Behavioral change in ex-addicts under methadone treatment. (in preparation)

Nemes, G., Gordon, N.B., and Henderson, A. A scaling method to describe the qualitative and quantitative aspects of sleep. (In press, 1973)

Babst, D., Newman, S., Gordon, N.B., and Warner, A. Driving Record of methadone maintenance patients in New York State. N.Y. State Addiction Control Commission, Albany, N.Y., Feb. 1973.

Gordon, N.B. and Appel, P. Performance effectiveness in relation to methadone maintenance. Proceedings Fourth National Conference on Methadone Treatment, San Francisco, 426-427, 1972.

Gordon, N.B. The functional status of the methadone maintained person, a chapter in Simmons, L.R. and M.B. Gold (eds.) Discrimination and the Addict, Sage Publication, Beverly Hills, Calif. (1973).

Summarized below are our findings:

Intellectual Functioning

Beginning in 1965, we were concerned with the question of the intellectual functioning of patients maintained on methadone. Patients were tested after stabilization on 100 mg of methadone taken once daily in oral doses. Aside from the absence of cases in the patient population in the lowest IQ categories, the scores on Wechsler Adult Intelligence Scale for 155 patients did not show any departure from expected distributions of IQ scores found in the general population.

Psychomotor Performance

An important segment of behavior that has been shown to be sensitive to the effects of drugs is that of psychomotor performance. Included under this rubric are all of the skills of everyday life -- automobile driving, sports, skills used in factories, offices and for leisure time activities. It is particularly important to assess samples of such behavior, particularly where the individual is under time pressure, and must make rapid and accurate responses to a changing environment.

Our earliest studies (Gordon et al., 1967) were with the first patients to be maintained on methadone at the Rockefeller University Hospital. The task we chose was the rotary pursuit task (RP) which had been used during World War II as part of the Air Force pilot selection battery (cf. Melton, 1947) and has had

wide use in the studies of the effects of drugs (Fleishman, 1960). The task employs an input signal consisting of a small circular target which rotates in a fixed path on a turntable. It was set to rotate at a speed of 60 rpm, which gave the center of the target a linear speed of 22 inches per second. The task of the patient was to bring the tip of a hand stylus into contact with the target and maintain contact by means of a rotary motion of the hand and forearm at the same rate as that of the target. Underlying the simplicity of the RP task is a complex of factors which are relevant to a number of other skills. It has been pointed out that RP "... is sensitive to wide variety of variables significant in training programs with much more complex skills" (Ammons, Ammons, and Morgan, 1958, p. 260). The main common ability shared by RP with other tasks is that of making highly controlled, but not over controlled, precise large muscle adjustments (Fleishman, 1960).

RP Study 1

Three male patients aged 23, 29, and 31 who had been addicted to heroin for more than five years prior to volunteering to participate in research on addiction at the Rockefeller University Hospital were subjects in this study. They had been in the hospital for nine months and had been maintained on a daily dose of 150-170 mg of methadone administered orally in orange juice in two equal doses. Testing sessions commenced in the fall of 1964 and continued during the spring and summer of 1965. In this study testing was given once weekly for twelve sessions and each session lasted about 30 minutes. Comparisons were made between the performance of the patients and the performance of college students as well as persons similar in background to the patients, who had no history of drug abuse.

In analysing the data of this study, two measures were used. One consisted of the total time that each patient kept the stylus in contact with the target during each trial, and the other was the

number of target hits made during each trial. Number of hits is informative of the intermittency, or constancy of behavior; time on target is a measure of skill in accomplishing the task. The patients did not differ from either of these groups either during the initial or later phases of practice, either in time on target, or in numbers of hits on the target; or was their performance subject to any unusual variability as might be expected when a narcotic drug is administered.

RP Study 2

One of the questions that must be asked about patients to whom drugs are being administered, is whether their performance is stable over the course of the day after drug administration (Henderson, 1967). The frequent swings from euphoria to the onset of withdrawal symptoms when heroin is being taken results from its short-acting properties and the fact that it is difficult if not impossible to achieve tolerance on a constant dose. With methadone, the administration of constant daily doses does lead to stabilized behavior, and the patient does not experience the repeated swings from euphoria to withdrawal but reports that he feels normal after he has been brought to the usual tolerance levels (100 mg/day). We decided to test this by observations of the patients' psychomotor performance. After the patients had been well-practiced on the RP task, they were each tested four times at each of three time intervals following their morning medication (8 a.m.): one hour (9 a.m.), four hours (12:00 noon) and eight hours (4 p.m.). Each patient was tested once a day for two six-day periods, separated

by one day, with the time of testing for all patients systematically varied in counterbalanced order.

The patients' responses gave no evidence of any abnormal variations; and while there were individual differences in skill, there was no pattern of change from one time to the next which would indicate that time since methadone administration was a factor influencing performance. There were no overall significant differences in time on target at the three times tested. The only significant differences in performance were observed on the hits measure as a function of time. These occurred in one patient, who demonstrated his greatest skill in the middle of the day. The other two patients exhibited lesser variations in performance as a function of target hits. One was best at 9:00 a.m., the other best at 6:00 p.m. In essence, the patients exhibited a high degree of skill, free from any significant variations in performance due to time of medication.

RP Study 3

As a follow-up on the studies of psychomotor skill, we were curious to know how well the patients retained the skill after a long lapse in practice. In previous studies of rotary pursuit, Bell (1950) and Eyesenck (1960) had reported a 29% and a 37% drop in skill after a year of no practice, and a rapid recovery of skill in non-drug using patients. The loss in skill for the three methadone patients was 22%;

and after a few trials, they had recovered this loss and were continuing to improve even further. Thus it would seem that maintenance on methadone (at that time between 150-170 mg/day) had no detectable effects on psychomotor performance as measured with the RP task.

Reaction-time Studies

In pursuing the investigation of possible adverse effects of continuous methadone administration, we decided to study an important component of psychomotor skill, namely reaction-time. Reaction-time has been shown to be sensitive to single narcotic dose effects (cf. Wikler et al., 1965 for a representative study). In a more important sense, reaction-time (RT) is an important behavioral measure in that it involves the ability to process sensory information as well as cognitive, attentional and motivational factors (cf. Teichner and Krebs, 1972).

We have completed two studies of RT, one a comparative study and the other to assess effects on RT of elapsed time since drug administration.

RT Study 1

In this study (Gordon, 1970) we compared the performance of 18 male and nine female methadone patients, maintained for at least a year and stabilized on a daily dose of 100 mg, with that of recently detoxified heroin addicts, and non-drug control individuals who were matched as closely as possible in socio-economic backgrounds to the patients. The non-drug control subjects (both male and female) were somewhat younger than the methadone patients.

We used three measures of visual RT--one a simple version of the task which required the subject to press a button as soon as he saw a stimulus light (consisting of a neon NE 51 lamp). The second task required the same response, but any one of six lamps could be lit. The third task had six response buttons, and required the subject to lift his finger from a central waiting point and depress a button under any one of six lamps which might be lit. The subjects were comfortably seated in a semi-darkened room, wore earphones into which was played noise at low level to avoid auditory distractions; and, after a general starting signal, subjects waited anywhere from three to 48 seconds for a signal. After a brief training in the way the apparatus was to be operated, each subject was given 15 signals to respond to on each task, with the simple RT task (i.e., first version) always given in the middle. The other two tasks were given in varied order to control for practice effects.

The results of the study indicate that methadone patients, both male and female, are either superior to or equal to relevant control subjects, in two of the RT tasks; and in the most complicated choice RT task, there were no differences at all.

RT Study 2

A second study of reaction-time was conducted (Gordon and Appel, 1972), this time using auditory signals. The purpose of the second RT study was to evaluate the stability of performance over a twenty-four hour period. All of the patients had been on methadone treatment for at least one year. Thirty patients were tested in all, and were divided into three groups: 10 male patients who were gainfully

employed, 10 male patients who were unemployed at the time of testing, and 10 female patients who were either employed or active as homemakers. They ranged in age from 23-50. In a comparison study, we tested male and female clinic staff and college students from Hunter College in New York City.

The apparatus used for testing consisted of a tape recorder on which was played a tape of 250 msec tones with a frequency of 3,000 Hz, that were presented without warning at irregular intervals from 5 to 90 secs. The patients wore a set of earphones to monitor the signals, and were required to press a switch as rapidly as they could after hearing the signal. Their RT's were recorded on a clock and read off in milliseconds (msec). Testing was done once on two separate days in the clinic to which the patients reported for medication. One test was given just before the patient took his daily methadone dose, and a second test was given one hour after the daily dose. The order of the two tests was varied from patient to patient to control for order of practice effects.

The results of this study revealed that there were no differences in performance whether the patients were tested when they were twenty-four hours abstinent from methadone or had taken their medication an hour before testing. Working male patients had the fastest RT's, female patients were slowest. Non-working patients had a greater tendency to improve their RT's between the two testings than working patients. In one group--the working male patients--there was a slight tendency for RT's to be faster one hour after medication. Neither the male nor female patients differed significantly in RT from the comparison groups,

confirming the RT results of Study 1. In general it is clear from this study that maintenance on stable doses of the long-acting narcotic, methadone, eliminates gross fluctuations in performance associated with single dose effects. The present data on RT performance are seen as adding further support to the findings that methadone maintenance treatment enables patients to function without abnormal fluctuations in performance.

Vigilance Study

These studies involve investigation of the human attention and monitoring function. Subjects are required to attend to a stream of information which they either listen to or observe visually. At certain unexpected times they must detect a particular signal, and report this detection by pressing a button. Number of correct detections, missed signals, false positives and response times go into the scoring of their performance.

In a study just completed 48 methadone patients (both employed and unemployed) were compared with drug free ex-heroin addicts and individuals who never used drugs. During two one-hour testing sessions the subjects were required to observe a screen on which a stream of letters were presented one at a time at a rate of one/sec. At intervals varying from once every five seconds to once every ninety sec. a letter designated as a target letter was projected. The subjects were required to press a button only when the target letter appeared.

We found no significant overall differences in performance between the methadone patients and the comparison groups either in

detection accuracy, response times or false responses to non-target signals.

Automobile Driving Study

To further expand our investigations into the behavior of methadone maintained individuals, we decided to choose an area of functioning which is of considerable importance in our society--that of automobile driving. This is an area in which skilled performance and social responsibility converge. It gives us an opportunity to examine the performance of patients in a realistic way. The study was a cooperative venture involving the New York State Narcotics Addiction Control Commission, the New York State Bureau of Motor Vehicles, and my research group at The Rockefeller University. In this study the names of a large group of methadone patients in treatment in 1969 were searched for in the New York State Department of Motor Vehicles files of licenses drivers; and when evidence that an individual had a license to drive was found, an "Abstract of Driving Record" was drawn. Such abstracts contain a variety of information, including convictions for motor vehicle offenses and traffic violations as well as reported accidents involving property damage and personal injury. Later a random sample of New York City male drivers was also drawn for comparison purposes. Data from the abstracts of 401 male methadone patients was compared with those of 182 randomly drawn male drivers. It

was possible to divide the time (spanning a five-year period between 1965 and 1969) during which patients were still heroin addicts and when they were enrolled in methadone treatment programs and to treat data from the comparison sample in a similar way so that comparisons could be drawn. In order to conduct the analysis we eliminated all patients who left the methadone program during the five-year period under study, and we restricted our sample to male drivers, since there were few women in the sample. This left us with 401 driving records. Of this number, 258 never had a record of an accident and 206 never had a record of any conviction for a traffic violation or other offense related to driving. Only 17 individuals had accidents both before and during treatment, whereas 85 had accidents before treatment and none after, and 75 had accidents during treatment but none before.

In order to compare the performance of patients while using heroin and during methadone treatment, we converted their absolute numbers of accidents and convictions to rates per year (since the times of observation were different for each person) and did the same thing with the records of the 182 male New York City drivers that had been drawn at random from the files. <u>The converted data indicated that during treatment methadone maintained persons do not differ significantly from the comparison groups either in rates of accidents or in convictions for driving offenses</u>.

Conclusion

During eight years of extensive study of the functional capabilities of persons maintained on methadone, we have concluded that maintenance on methadone results in no physical side effects that present barriers to any vocational activities that might be chosen by such persons.

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Plaintiffs

-against- 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,

Defendants

October 24, 1974
11:00 a.m.

PRESENT:

MR. DALTON, ESQ.
MR. BALBER, ESQ.
MR. MORRILL, ESQ.
MISS DUBOIS, ESQ.
MR. MELTSNER, ESQ.
Attorneys for plaintiffs

MR. SUMMERS, ESQ.
MR. DUNN, ESQ.
Attorneys for Transit Authority

MISS GOLD, ESQ.
Assistant Corporation Counsel for
Civil Service Commission
MR. ROSKIN, ESQ.

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* * *

MR. BALBER: Plaintiffs' next witness is Dr. Norman Gordon.

Dr. Gordon prepared a written statement. I would like it marked.

(Plaintiff's Exhibit 35 , marked for identification.)

N O R M A N B. G O R D O N, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. BALBER:

Q Dr. Gordon, what academic degrees do you hold?

A I hold a bachelors --

MR. BALBER: We have a curriculum vitae.

THE COURT: Let's just have it marked.

(Plaintiff's Exhibit 36, marked for identification.)

Can we use this as credentials? Would you offer this as credentials?

MR. BALBER: Yes, your Honor, except I would like to go into a few highlights. I won't go through them in tremendous detail. Defendants have a copy.

THE COURT: Is this a list of credentials you have made up, sir?

THE WITNESS: Yes.

THE COURT: All right, I will receive it.

(Plaintiff's Exhibit 36, received in evidence.)

Q I believe the curriculum vitae indicates that Dr. Gordon has a PHD in psychology from New York University and an MA in psychology from the New School For Social Research and received his PHD in 1957.

Dr. Gordon, when did you become professionally involved in the field of psychology before you received your PHD?

A Yes, while I was in the Army.

Q When was that?

A 1944. After I completed a period of training in personnel psychology, I was assigned to duties as a classification specialist which involved psychological duties.

Q What did you do as a classification specialist?

A That involved interviewing, recommending enlisted men for assignment, job descriptions, preparing job descriptions, and doing some job analyses.

Q When did you leave your World War II military service?

A 1946 and I was employed in private industry for five years.

Q What did you do in private indusfry?

A I was a personnel manager for a private manufacturing company. And that involved interviewing employees in a light manufacturing organization, setting up training systems, incentive programs, bonus systems, designing work space layouts later on when I had more experience.

Q And when did you terminate that employment?

A 1951. In 1951 I went to work for the U.S. Navy then called the Special Devices Center.

THE COURT: Isn't that in the sheet?

MR. BALBER: I wanted to have it before the Court.

I know the Court has not had an opportunity to read the curriculum.

THE COURT: It's before the Court right now, I am reading it. There is no need to repeat.

MR. BALBER: I would like to mention his prior positions of employment.

THE COURT: Is it any different than what's in here?

MR. BALBER: I believe it is adequately presented. I will rely on that. I also, your Honor, would like to offer in evidence in lieu of extensive testimony a statement by Dr. Gordon which has been prepared by him which has been marked Plaintiff's Exhibit 35 for identification.

THE COURT: Do the defendants have the statement?

MR. BALBER: Yes, your Honor, they have the statement.

MR. SUMMERS: 15 minutes ago.

THE COURT: I just got it three minutes ago.

MR. SUMMERS: Well, your Honor, we think we asked, if they are going to offer in evidence narratives of what the witness is going to testify, we ask a recess so we can read it and digest it --

THE COURT: Just sit and look at it right now. It may save us some time in the long run.

(Pause.)

THE COURT: What I have done is to go through this quickly to see what the substance and what type of statements are being made. I have not studied this thoroughly. But it seems to me on the question of admissibility, it is really a question of whether if this witness made these statements, they would be admissible into evidence, and I would think they would be.

These are descriptions of tests that he has participaged in or performed -- isn't that right?

THE WITNESS: Yes, sir.

THE COURT: And the results of those tests, and it seems to me that it is vastly more efficient to have it introduced in this way and normal question and answer period.

Now, my only problem is how you cross examine on it. You certainly have to have an opportunity to be ready to do that, but that's another story. But as far as the admissibility, I would think it could be admitted and it would be helpful.

BY THE COURT:

Q Doctor, if the defendants need a little time to think about how they might -- whether they want to cross examine you on this and what they could ask you, it might actually be more efficient for you to come back then to sit

and wait for them to study it and analyze it. Are you in New York?

A Yes. The only day I could be back would be tomorrow.

Q Well, maybe we could arrange that. If they had had this in advance, they could have been better prepared. It's a little hard for anybody who isn't listening to it slowly to prepare cross examination.

THE COURT: What about the admissibility, subject to adequate preparation for cross? Can we admit it?

MR. SUMMERS: I suppose if the doctor adopts it and says that expresses his --

THE COURT: He has already said that. I will admit Exhibit 35.

(Plaintiff's Exhibit 35, received in evidence.)

THE COURT: Do you have any other questions of Dr. Gordon on direct examination?

MR. BALBER: Yes, one minor matter was not touched on in the statement.

Q Dr. Gordon, have you had the opportunity to examine the named plaintiffs in this lawsuit, Carl A. Beazer, Jose Reyes, Francisco Diaz, or Malcolm Frazier?

A Yes, I did.

Q And when did that examination occur?

A Last April, April, 1974.

Q And where did it occur?

A In my laboratory at Rockefeller University.

THE COURT: Wait a minute, I want to make sure. Give me the list of names again? You examined Mr. Beazer?

MR. BALBER: Yes, your Honor.

A Mr. Beazer, Mr. Reyes, Mr. Diaz and Mr. Frazier.

THE COURT: Not Mr. Smith?

MR. BALBER: No, your Honor.

Q Doctor, of what did that examination consist and let's go through it step by step so it will be perfectly clear.

A I used three -- aside from briefly interviewing them to get, you know, certain minimum background data --

Q Such as?

A Age, previous education, which is important for the norms that I use.

Q The norms in your tests?

A Yes. And occupation.

I then informed them about the tests before each one was administered, gave them the instructions and tested them.

Q What did those tests consist of?

A The tests consisted of a rotary pursuit test.

melt 15 Gordon-direct

Q What is a rotary pursuit test?

THE WITNESS: Is it described in the exhibit?

MR. BALBER: I believe it is. I thought he could describe it in a sentence.

THE COURT: Please don't repeat.

Q Did you administer that test to all of the four?

A All four.

Q And what were the results?

A Two sub-tests of the Wechsler adult intelligence scale.

THE COURT: What's that?

THE WITNESS: That is a test that consists of a number of sub-tests, but I use two because they are what I believe to be most relevant.

THE COURT: What do you call this?

THE WITNESS: Wechsler Adult Intelligence Scale.

MR. SUMMERS: Your Honor, we were given a paper which apparently contains some summary of the witness' testimony. It sounds very much like what he is saying now.

MR. BALBER: That was merely a question of courtesy. That's a very terse written report the doctor gave us and I thought you deserved an opportunity to be fully informed.

MR. SUMMERS: I thought it was comparable to the

other document you gave me.

MR. BALBER: It wasn't intended to be so.

THE COURT: Go ahead.

A (Continuing) So the two sub-tests consisted of what is called digit symbol substitution.

Q Is the Wechsler Adult Intelligence Scale, is that an IQ test?

A It's a general test of intelligence for adults, yes.

In toto, it is usually given that way.

Q Is that a common test?

A Standardized individual test. And each of the sub-tests also has norms as well as the total test, but the digit symbol substitution has very often been used in studies of drug reserch for drug effects.

Q What kind of effects appear on the test?

A Well, presumably drugs, alcohol, if they are present is specified quantities, will cause a lowering of performance

Q All drugs, or --

A Well, particularly narcotics or alcohol.

Q And what were your results for the names plaintiffs?

A So that I used that for that reason and it is also a performance test, it was some way that I could see and observe their performance in the laboratory. What it involves is being

given a list of symbols, ten symbols and ten numbers, and the numbers are written in boxes below the symbol, and the individual has to substitute a symbol every time he sees a different number, the numbers are arranged in random order.

He has to work very fast under time pressure.

Q And how did the plaintiffs score on that test, go through them one by one.

A Mr. -- all of the plaintiffs -- the four named plaintiffs that I tested performed within the normal range, 2, Mr. Reyes and Mr. Beazer were in the above normal, better than normal, and the other two were average within the normal range.

Q You mentioned previously a rotary pursuit test but I don't believe you described how the plaintiffs performed.

A They all performed the way I would expect them in the normal population would perform based on the norms I have accummulated for college students, ex-addicts, age-matched individuals. I found no difference in their performance, and in any of their performances.

Q Were those all the tests you performed?

A The third test was a test which involves reading to the person you're examining, a list of numbers, very slow, one at a time and then asking them to repeat them in the same order and then another list which he is asked to repeat in

reverse order. It starts out with two numbers, then three, it is a graded series until it gets to the point where he can't remember them sufficiently well to repeat them in the order requested.

Q Does this test also reflect drug effects?

A Yes, it does.

Q And how did the plaintiffs score on that test?

A They performed normally within the normal range, that is average as far as the test is concerned, two being above average, Mr. Reyes and Mr. Beazer being above average.

Q Those were all the tests?

A Those were the three tests that I gave and I wrote you a brief report.

MR. BALBER: Your Honor, that concludes our direct. We will work with Dr. Gordon to make him available.

RICHARD D. BLOMBERG
Vice President

Dunlap and Associates, Inc.
Date of Birth: 7/29/45

Education:

M.S. (Industrial and Management	Columbia University	1968
B.S. Engineering)	Columbia University	1967

Professional History:

1968-Present	Dunlap and Associates, Inc.
1973-Present	Columbia University
1964-1968	Arden Radio Stores, Inc.

1968-Present — Dunlap and Associates, Inc.

Pedestrians and Alcohol - Currently responsible officer and project director on a two year study of the role of alcohol in pedestrian accidents. Specifically, a comparison will be made of the alcohol involvement in pedestrians at large and pedestrian casualties including fatalities and non-fatal injuries. The work, under contract to the National Highway Traffic Safety Administration (NHTSA) will involve selection of a study site, on-scene pedestrian accident investigations including measurement of blood alcohol concentration (BAC), "roadblocks" to measure BAC in the populations at risk and an in-depth analysis of all data (coroners, police, etc.) on pedestrian fatalities.

Pedestrian Messages Field Test - Currently Responsible Officer and Project Director on a 26 month study for NHTSA to field test five of the pedestrian safety messages previously developed (see "Pedestrian Safety Messages" below). Each of the messages will be produced in final media form (films, tapes, etc.) and distributed in a selected test city. Accident data will be collected as the primary evaluative measure. These data will be augmented with on-site behavioral observations as an intermediate measure of program effectiveness and as feedback for on-going message revision.

Comprehensive Evaluation of Clearinghouse Materials - Currently directing a study under contract to the National Clearinghouse for Drug Abuse Information (NCDAI) to pre-test drug education publications to be published by NCDAI. Each document is reviewed by a multi-disciplinary panel of expert reviewers and a sample of members of its target audience. In addition, where appropriate, technical content is thoroughly researched in the relevant literature. Each document is pre-tested and an evaluation report prepared within 10 days of its receipt from NCDAI. Also directed an identical study in 1973-1974.

Pedestrian Safety Messages - Directed a study for the National Highway Traffic Safety Administration (NHTSA) to develop and pre-test public education messages for pedestrian safety. Each message was based upon significant findings from previous pedestrian accident research. A subset of the total group of messages was covertly pre-tested on pedestrians in a traffic environment and determined that a positive behavioral change is possible from pedestrian safety education.

Pedestrian Model Regulations - Directed a study for NHTSA to develop model laws, regulations or ordinances to enhance pedestrian safety in nine specific pedestrian situations. Significant accident research findings together with a review of the literature and limited experimentation was used to identify the most beneficial countermeasures to promote as regulations in each area. The regulations were "acceptance" tested through the performance of a large-scale nationwide attitude survey of interested groups, e.g., police, legislators, etc., and the general public. Thereafter, each regulation was fully documented and augmented by appropriate supporting materials.

Evaluation of Printed Materials on Drug Abuse - Directed a study for the National Institute of Mental Health to evaluate the effectiveness of pamphlets, posters, etc., in the prevention and treatment of drug abuse. A twofold evaluation employing panels of expert reviewers and samples of the target audience was conducted.

Drug Abuse and Driving Performance - Directed a study for the National Highway Traffic Safety Administration (NHTSA) of the effects of the abusive use of narcotics on highway accident and violation records. The experimental sample of 1562 was drawn from patients undergoing methadone maintenance treatment. A separate control group of non-addicts was also constructed. An in-depth interview was conducted with each patient and driving records were obtained from state files. Duties included overall technical and financial direction, liaison with NHTSA, software and questionnaire preparation and data analysis.

Recreational Facility Feasibility Study - Directed an effort for an industrial syndicate to establish the feasibility of placing a large recreational facility on a particular site. All aspects of the area and the proposed facility were examined including traffic flows, engineering, economics, ecology and projected market. Principal presenter for the group at hearings of the Planning and Zoning Commission.

Aircraft Noise Study - Directed a study of the impact of aircraft noise on a client's property as part of an effort to establish grounds for rezoning. Coordinated data collection and analysis and presented findings at a public hearing of the cognizant Planning and Zoning Commission.

ASIS Evaluation - Participated in a study for the Transportation Systems Center of DOT to evaluate and field test interlock devices designed to prevent the alcohol impaired driver from operating his vehicle. Responsibilities included supervision of all equipment, conduct of testing sessions and participation in planning and analysis.

Market Research on Sewage Treatment Systems - Directed a study for a major equipment manufacturer to determine the market potential and ultimate market strategy for an advanced packaged sewage treatment system. Efforts included the design and conduct of interviews with industry leaders and members of government, detailed product analysis and collection, interpretation and analysis of secondary source data.

Alcohol Program Evaluation - Participated in the development of evaluation procedures for Community Alcohol Safety Action Programs (ASAPs) which are being funded by NHTSA. Co-authored the original work plan. Tasks included determination of data to be collected, procedures to be used, storage and retrieval specifications, reporting formats, national-level evaluation procedures and co-authorship of the ASAP Evaluation Manual. In addition, continuing consulting service to NHTSA and individual ASAPs was provided.

Textile Information System - Developed a computerized management information and inventory control system for a maker of knit fabrics. The system was interactive thereby allowing rapid entry and access of all pertinent information.

Task-Order Management Consulting - Provided continuing task-order consulting services to the President and Treasurer of a large multi-product electro-mechanical manufacturing concern. Work included statistical analyses, development of new ideas for management controls, and evaluation of existing procedures.

Product Safety - Directed a study for the National Commission on Product Safety to investigate and document the role played by the consumer education material supplied with a product in preventing accidents, injuries and product misuse. Interviews were conducted with manufacturers, trade associations, injured and uninjured consumers, and consumers from the disadvantaged segment of the population. In addition, surveys of numerous products were made

in retail stores. Authored a final report detailing existing problems and outlining procedures for the generation of more effective materials. This study has also been the topic of a speech presented before several professional societies.

Industrial Statistics - Directed a study for a large manufacturer of electro-mechanical devices to quantify the relationship between output and overhead costs. Computer-based multiple regression and correlation techniques and a specially written program for data transformation were employed to obtain the required prediction equations for each department and the plant as a whole. These equations are used by management to calculate the burden absorptions which a potential order will contribute and therefore the quantity discounts which can be offered.

Vehicle Design Safety - Participated in a consulting service to the Vehicle Safety Design Surveillance System (VSDSS) being operated by the New York State Department of Motor Vehicles. Contributions included verification of analyses performed, design of additional analyses and report writing. Particular duties included evaluation of hypotheses concerning vehicles and management of computer operations.

School Bus Operations - Participated in a study for the U. S. Department of Transportation to examine the relationship between school driver age and school bus accidents. Contributions included design and preparation of all computer programs required for data analysis and reduction, design of data collection system, and recommendation of a permanent pupil transportation information management system. Data on 4003 drivers were collected during the study. Co-authored a final report.

Market Research - Directed a study for a division of a large conglomerate to determine the ways in which a remote telephone answering device was actually being used and the reason for customer dissatisfaction with the product and its service. Recommendations to the client included a decision tree to be followed in determining whether to discontinue, modify, or continue to manufacture the product. Also participated in a study for a major manufacturer of office equipment to assess the market potential of several proposed innovations. Contributions included work on questionnaire design, pre-test of questionnaire, and liaison with client personnel.

Photocomposition System - Conducted a study of a photocomposition system being developed by a large periodical publisher to determine its probable operational characteristics. Work included an examination of functional allocations between men and machines, determination of system requirements, comments on hardware compatibility and reliability, and recommendations concerning staff training, software modification, and procedure development. A proprietary report was authored.

Copy-Processing Operations - Participated in a study of copy processing operations for a major periodical publisher. Tasks conducted included an examination of costs, scheduling, manpower and computer utilization, and computer programming. An analysis of the entire system from story origination in the editorial offices to final setting of type at the printing plant was conducted and recommendations for time and cost reduction were made. Co-authored a proprietary final report.

Military System Evaluation - Participated in a study to evaluate command and control functions of the SAFEGUARD ABM system for Bell Telephone Laboratories. Work included functional analysis, computerized generation of operational sequence diagrams, man-machine allocations, and console layout.

Computerized Statistical Techniques - Experienced in the writing and operation of computer programs for a variety of descriptive and inferential statistical tasks. Has modified library programs for specific needs or different machines. Qualified programmer in APL, FORTRAN II and IV for IBM system 360, SDS, and a variety of special purpose languages. Currently responsible for all data processing on over 6 major Dunlap projects, recent analytic tasks have included multivariate (7-way) analyses of variance, canonical correlations, discriminant functional analyses and numerous correlational and different tests.

1973-Present Columbia University

Currently acting as a Lecturer in the Department of Industrial and Management Engineering teaching a course entitled "The Design of Man-Machine Systems."

RICHARD D. BLOMBERG
Vice President

1971-1973 Hampshire House, Inc.

President of the Board of Directors of Hampshire House, Inc., a 60-family cooperative housing complex in Stamford, Connecticut insured under section 213 of the Federal Housing Act. In charge of all operations and the management of assets totaling almost $3 million. In the last year alone, capital improvements of over $150,000 were planned, financed and directed.

1964-1968 Arden Radio Stores, Inc.

Vice President of Arden Radio Stores, Inc., and Arden Television Service Company, Inc. Duties included supervision of service crews, preparation of financial statements, personnel, purchasing, customer relations, and component system sales, analysis and installation. In addition, directed all analysis and funding of capital additions and technical projects. Qualified service engineer for audio components, sound systems, radio, color and black and white television and room air conditioners.

Professional Affiliations:

Alpha Pi Mu (Industrial Engineering Honorary)
Operations Research Society of America
Tau Beta Pi (Engineering Honorary)

Publications:

Blomberg, Richard D. Consumer Education and Product Safety. Final Report to the National Commission on Product Safety, February 1970, Dunlap and Associates, Inc., ED 70-22, Darien, Connecticut. Report available from NTIS, Springfield, Va. 22151. Order No. PB-194-180.

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CARL A. BEATER, et al,

Plaintiffs

-against-

72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,

Defendants

October 24, 1974
11:00 a.m.

PRESENT:

MR. DALTON, ESQ.
MR. BALBER, ESQ.
MR. MORRILL, ESQ.
MISS DUBOIS, ESQ.
MR. MELTSNER, ESQ.
Attorneys for plaintiffs

MR. SUMMERS, ESQ.
MR. DUNN, ESQ.
Attorneys for Transit Authority

MISS GOLD, ESQ.
Assistant Corporation Counsel for
Civil Service Commission
MR. ROSKIN, ESQ.

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* * *

R I C H A R D D. B L O M B E R G, called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BALBER:

MR. BALBER: Your Honor, I have a copy of Mr. Blomberg?s curriculum vitai which I would like marked.

(Plaintiffs' Exhibit 37 was marked for identification.)

MISS DuBOIS: Does your Honor have any objection to Dr. Gordon being in the courtroom now?

MR. DUNN: Defendants' counsel has an objection, your Honor.

THE COURT: All right. Thank you, Doctor.

MR. BALBER: Your Honor, this summarizes some of Mr. Blomberg's expert qualifications, although not all of them, and I would like to introduce them into evidence. There is no objection.

xx (Plaintiffs' Exhibit 37 was received in evidence.)

Q Mr. Blomberg, your curriculum vitae states

that you have a degree in Industrial Management Engineering.

A That is correct.

Q Would you please describe as simply and succinctly as you can what industrial management engineering is?

A Well, industrial management engineering covers many fields, but the area which I have studied concerns human performance in various industrial systems and also in various safety systems, and these include those in which men and machines can be brought together to work most effectively and most safely.

Q Your curriculum vitae also states that you were on the faculty of Columbia University ?

A That is correct. I am Adjunct Associate in the graduate school of engineering at Columbia University.

Q What is the subject matter of your course?

A I teach a graduate level course in the design of manned machine systems. This course deals with designing systems to take into accountbasic human behaviors, human perception and so forth, so that systems can be developed safely and efficiently which involve man.

Q The Judge has before him, Mr. Blomberg, a copy of your curriculum vitae which summarizes in detail the different kinds of studies you have worked on. Can you

state generally the type of work these studies represent?

A Yes, the majority of my professional career has been devoted to the study of human behavior and human performance in various safety related environments, which include traffic safety environment, although I have studied product safety environment and similar related things such as the Safeguard Missile System and other places where human performance is critical to the implementation of a safe system of traffic safety and which has included work with pedestrians, school bus drivers, drivers under the influence of alcohol, control drinking experiments with drivers who could potentially be driving and most relevant, a stufy of the driving habits of methadone patients.

Q You have done that, as your curriculum vitae states, for Dunlap Associates, a consulting firm who have contractees?

A The major contractees have been the United States Department of Transportation and the Highway Safety Administrtion and the National Highway Safety Bureau.

THE COURT: Point out on Exhibit 37 which of the studies refers to the driving effects of methadone maintenance people.

THE WITNESS: I believe the precise title is

Drug Abuse and Driving Performance listed on page 2, the fourth item down.

MR. BALBER: I am sorry it is buried there, but this was not prepared for this case specifically.

Q Had any of your work been published?

A Yes, virtually all of my work has been published primarily through the various government publication agencies that sponsor the studies such as the National Technical Information Service, the Government Printing Office, and in addition, I have published in various professional journals and have delivered papers on my work to professional societies and other meetings.

Q In preparing your studies for publication, do you study any scientific literature?

A Yes, it is a general rule that I have established in my firm for all of the work that we perform that intensive review of the literature must be conducted prior to the performance of the study. This even includes study of areas that we studied before, because the literature does change very rapidly and virtually all of the studies began with an intensive review of the literature and because of that we have a well-equipped technical library at our firm manned by two librarians.

MR.BALBER: Your Honor, I submit that the witness qualifies as an expert in industrial management engineering.

THE COURT: I will take his testimony.

Q Mr. Blomberg, could you please describe as simply but as completely as you can the methodology of your methadone driving study?

MR. DUNN: Does that refer to the drug abuse and driving performance study?

MR.BALBER: Yes, it does.

THE COURT: When was this done?

THE WITNESS: The study was done in 1971. It was completed in middle 1972.

Q I believe you testified this was under contract?

A This was under contract to the National Highway Traffic Safety Administration, that is correct.

Q Had they authorized your testimony here?

A The contract has been completed. They have been apprised of the fact that I am testifying. They have no contractual right to prevent me from testifying, but they are very interested in my testimony and would --

THE COURT: We don't need that. You can testify.

THE WITNESS: The study has been published.

Q Let's get back to the simple but complete description of your methadone test study.

A The purposes of the study was to examine the behavior and driving records of the methadone maintenance patients and to do this we interviewed over 1600 methadone maintenance patients in 44 clinics in the State of New York. These were in 11 different counties.

Q How were they selected?

A The selection of clinics -- we first obtained a list of all clinics that were recognized within the state. Then we divided them into three categories based on driving conditions basically, urban, rural and suburban. We called the urban New York City since that was so predominant within the state, separated from New York City other cities and in the non-city areas we did a population count and apportioned the sample among these three groups.

Q Did you make any attempt to assure that the sample was indeed a cross section?

A Yes, we certainly did and, infact, to do that we not only used the state maintained clinics that were authorized by the narcotic addiction control commission, but we also went to private clinics, and went to various hospitals, and so forth, so that we had a cross section of the socio-economic characteristics of the methadone

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maintainees in various areas of the state and whatever other influences we could determine to influence the sample.

Q What did you do to assess the driving record?

A Well, the first thing we did was to conduct an in depth interview with each of those subjects -- we called them experimental subjects -- that we encountered at the methadone clinics. These interviews lasted on the average about 20 minutes and the purpose of the interview ws to ferret out all of the information that we could on the driving behavior, driving habits of the patient; not the safety related behavior but how far he drove, how often he drove, why he drove, what type of vehicle was driven, the hours of the day that the vehicle was driven, and so forth, and simply a face-to-face personal interview, which is the only reliable way we have these days to get that sort of information from a population of people.

Q Now, you said you found a match control group. Then what did you do?

A Then what we did, we asked each of the experimental subjects to give us the name of a person of his approximate age who was neither a methadone patient nor a heroin addict and had never been one, so that we could obtain a matched group of traffic records to measure safety. Simply--we had found through pretesting that methadone

maintenance patients knew with relative assurance the drug use habits of their peers and, in addition, that people that would be cited this way by an experimental subject would be closely matched with the experimental in terms of socio-economic background, race and other important influences on driving behavior.

We were then able to get traffic records, which are called driver abstracts, from the New York State Department of Motor Vehicles on a sample of our experimentals or methadone patients and on a sample of these matchedcontrols, so that we could have a uniform basis for making safety-related comparisons in terms of accidents and violations.

Q How did the driving records of the experimentals in your study, that is, methadone maintained persons, compare with the driving records of the non-drug using controls?

A Again, no matter how we compared our experimental population with either the control population or the driving records of all New York drivers as a whole as published by the New York Department of Motor Vehicles, the experimental showed no worse accident or serious moving violation records than any other control groups or the state population at large.

Q Were they heavy drivers?

A Yes. Our experimental population was driving at or above the national mileage average at the time they were under methadone maintenance, something upwards of 12,000 miles per year on an average, so that this would tend to indicate that you would have a higher accident and violation rate because of the greater exposure.

We did n ot have a greater measure of exposure as such for the state group as we had of the state norms. We were able to calculate accurately for the experimentals and for the same age and sex distribution and we found the rates identical.

In fact, the methadone maintenance rate in 1971 was slightly lower than the statewide rate but not statistically lower. In essence they appeared identical.

Q Have you performed any studies designed to assess the driving performance of problem drinkers who are under rehabilitation treatment?

A Yes. I was involved in several such studies. I have read of many similar studies. It is generally recognized that the presence of alcohol in the blood of a driver significantly increases the risk of a crash.

Perhaps the landmark study of this subject --

THE COURT: I don't think we need that.

It is obvious you are talking about those who have alcohol in the blood.

THE WITNESS: Yes, your Honor.

Q How about people who have had drinking problems that are in some sort of rehabilitation?

A There have been quite a few studies performed of the driving records of alcoholics in treatment similar in methodology to our study of methadone patients. One such study was done by Dr. Smart and Dr. Schmidt and they showed that the alcoholics in treatment had had a significantly higher number of accidents and violations prior to being in treatment.

More recently my colleagues --

THE COURT: When was that?

THE WITNESS: Prior to being in treatment, your Honor.

THE COURT: We are talking about in treatment.

THE WITNESS: Right. I was going to cite a study recently completed by my colleagues at Dunlap & Associates, Dr. Preusser and Dr. Ulmer as part of the evaluation of the Nassau County, New York Alcohol Safety Action Project.

Specifically this was a report on the rehabilitation counter measure. This was a rehabilitation program

of convicted drinking drivers and, in fact, they found that the convicted drinking drivers who had gone through the rehab program showed more accidents of convicted drinking drivers who had not gone through the rehab program.

However, the date on which it was reexamined it was found the difference was due to the fact that those who had gone through the rehab program had their license back for an additional two months and when those two months were removed the numbers were identical, which means the rehabilitation didn't have any effect. These people were still getting violations and accidents at the same rate after rehabilitation as they had before.

THE COURT: I don't know what we are talking about. In these alcohol studies, you are not referring to situations where the man or woman is not drinking, are you?

THE WITNESS: Yes, these were all accidents and all violations. These were not just alcohol related violations. This sample or this population of people in the rehabilitation program got there because they had been convicted of the drunken driving offense, but the offenses that I am referring to that they committed subsequent to the rehabilitation, covered all traffic accidents and moving violations regardless of whether alcohol was involved or not.

THE COURT: Was there any control to know whether these people during the period of time were abstaining or whether they were drinking, or don't you know?

THE WITNESS: They were both involved. There were alcohol related traffic events occurring subsequent to the rehabilitation among some of the people. So, therefore, obviously some of them were not abstaining.

THE COURT: But there wasn't any controlled experiment to show whether a man with an alcoholic problem who was then being treated and was abstaining, what accident or moving violation rate he would have?

THE WITNESS: Specifically those were who were abstaining. No.

THE COURT: I don't think this is helpful. It just means that people who are having alcohol problems may during the time they are treated have a rocky time of it. I don't think this gets us anywhere.

MR. BALBER: Your Honor, I will drop that.

Q Are you aware of any controlled studies that have been done to assess the driving performance of epileptics or diabetics?

A Yes, I'm aware of one such study that was performed by Dr. Julian Walter who is now at the University

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of Vermont.

MR. DUNN: Objection on the ground of relevance.

THE COURT: Sustained.

MR. BALBER: It is an agreed upon fact that the Transit Authority employs diabetics and epileptics and the performances of diabetics and epileptics and their reliability in terms of human performance is certainly relevant to this case.

THE COURT: As to a man who is an epileptic, if he doesn't have an epileptic fit he is just going along normally; right?

THE WITNESS: That would be the assumption. However, this study, which is a landmark study and has been cited --

THE COURT: All right, he may testify on that. I'll take it.

THE WITNESS: The study performed by Dr. Walter in California was reported in the New England Journal of Medicine. He found that both epileptics and diabetics as a population in California, where there is a statute requiring physicians to report people undergoing treatment for epilepsy, so they felt they had a relatively complete sample of epileptics of all kinds in the State --

MR. DUNN: I object to the testimony.

If counsel seeks to put the article in from the New England Journal of Medicine, that is, into evidence, I would certainly have no objection.

MR. BALBER: The proposed Federal Rules and New York law prohibits the introduction of learned treatises and learned scientific articles.

MR. DUNN: I am suggesting that if counsel desires to have Dr. Walter's article that appears in the New England Journal of Medicine introduced into evidence we would have no objection.

THE COURT: Is that the study that you are talking about?

THE WITNESS: Yes, it is.

MR. BALBER: Do you want to stipulate it into evidence? But it does violate the rules of evidence.

THE COURT: It doesn't violate the rules of evidence if all parties agree to it.

MR. BALBER: I will agree to stipulate it into evidence.

THE COURT: All right.

Why don't you offer it and have it marked.

MR. BALBER: We will have to submit it at a later date.

THE COURT: Fine.

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Q Mr. Blomberg, as an engineer what do you feel that the implications of your methadone driving study are for the performance of methadone-maintained persons in safety sensitive situations other than driving?

MR. DUNN: May I have the question read back.

(Question read.)

MR. DUNN: I will object to that question, your Honor.

THE COURT: He can answer. I will overrule the objection.

Do you have an opinion about the implications of other activities besides driving?

THE WITNESS: Most definitely.

THE COURT: Okay, what is that?

THE WITNESS: Driving is one of the more complex psycho-motor tasks that a normal human undertakes. It involves many aspects of motor performance, controlling a car and so forth and perceptual perceptual performance, decision-making, risk-taking and so forth. It is my opinion that anyone who can perform adequately in the driving task could perform in virtually any other safety-sensitive task such as operating machine tools, driving trucks and so forth, because of the very nature of the complexity of the driving task and, of course, from my

study of the literature I believe that our findings, my findings on the methadone driving study are confirmed by the more basic laboratory studies such as the ones that Dr. Gordon has done, of which I am aware.

MR. BALBER: That concludes our direct examination.

STATEMENT OF ROBERT G. SCHLUTER,

Executive Director of Education and Training
Programs for the Sheet Metal Industry

I have been a sheetmetal worker for the past 20 years. During this time I have had experience on the job, as a Superintendent for the Charles Hartmann Sheetmetal Company, and as a teacher. I am currently Secretary of the New York State Joint Education Committee for the Sheetmetal Industry. I am also Chairman of the National Curriculum Development Committee for the Sheetmetal Workers International Association. I have been designated a Certified Safety Instructor in Construction Safety by the United States Department of Labor. I am currently, and have been for the past three years, Director of Education and Training for the Joint Apprenticeship Program of the Sheet Metal Industry. I am thoroughly familiar and experienced in all phases of the sheetmetal trade, including operations, training, supervision, personnel selection, and safety.

The Joint Apprenticeship Program is co-sponsored by the Sheet Metal Workers International Association Local Union 28 of New York and the Sheet Metal and Air Conditioning Contractors National Association, Inc. and has, since 1917, been the sole means of entry into the sheet metal industry in New York City. During the four-year apprenticeship program, sheetmetal workers work on all phases of the job for nine days out of every ten. On the

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tenth day, the worker attends classes at our school in Woodside, New York.

It is difficult in a short statement to enumerate the skills needed in an industry as complex as the Sheet Metal Industry. A Sheet Metal Journeyman must be able to draw, cut, bend and shape, fabricate, erect, test and balance sheet metal duct systems. He must also be able to weld, burn and solder. He must be thoroughly familiar with the proper handling of all types of welding machines, including Mig welding which is used in welding sheet metal ducts, Heliaic welding which is used when welding stainless stell and aluminum, and Carbon Arc welding which is used in galvanized duct welding. He must also be familiar with acetylene burning which is used in the industry on all types of metals. Sheetmetal workers frequently must work on scaffolding and ladders at great heights. In the shop they must work with hazardous close tolerance machinery. Apprentice sheet metal workers work under the general supervision of a journeyman sheet metal worker, but while on a particular job site, an apprentice may be and often is sent off on his own to perform a particular task.

The sheet metal industry is an extremely hazardous one. Failure of job performance by a sheet metal worker can endanger

the lives of the worker, his co-workers, and members of the public. The extreme hazards encountered in this industry has been recognized by the federal government. In 1971, citing the high injury frequency rate, the United States Department of Labor designated the sheet metal industry as a target industry under the then recently enacted Occupational Safety and Health Act of 1970.

For the past three years, I have accepted certain rehabilitated former drug addicts into the Joint Apprenticeship Program. When first approached by Ms. Barbara Krong of the New York City Addiction Services Agency, I was very reluctant to accept such persons, principally because I feared that their reaction time might be slower than that of the general population. Reaction time is absolutely crucial to safety in the sheet metal industry. However, after reading the study of Dr. Norman Gordon on reaction time of methadone patients, I agreed to initially hire a single methadone maintainee. I did not agree to waive any of our regular entry requirements which include a written aptitude test, a physical examination and an interview. In addition to these regular requirements, I required that the rehabilitated former addict have been enrolled in a recognized

methadone maintenance or drug free program for at least six months and that he divulge to me the name of his counselor and his urinalysis records.

I followed the initial methadone maintainee very closely, and also alerted the sheet metal contractor to whom he was assigned that I wanted to be immediately notified of any aberrant behavior on the part of this employee. The record of this worker was excellent, both as to performance and attendance. His job performance was in no way distinguishable from that of any other successful apprentice sheet metal worker.

I have subsequently knowingly hired a number of other rehabilitated former addicts as apprentice sheet metal workers. In doing so, I have imposed the same requirements as I had initially -- adherence to our regular employment standards and successful participation in a recognized methadone maintenance treatment program or drug free program for at least six months. While most of the rehabilitated former drug addicts I have hired have been methadone maintainees, I have also hired drug free former addicts. My experience with the two groups is the same. The job performance and attendance records of these persons have uniformly been excellent. Currently, approximately 6 of the 300 apprentice sheet metal workers in the Joint Apprenticeship Program are rehabilitated former drug addicts.

In brief, my experience with the employment of rehabilitated former drug addicts has been that they have performed at least as well as the population at large of apprentice sheet metal workers. They have worked safely and competently in a highly hazardous, heavy industrial setting. As an administrator I have concluded that their good and dependable performance makes their employment sensible. As an expert in the sheet metal industry, I have concluded that former drug history alone is not a reason to disqualify a person from work in a hazardous industrial setting.

CARL A. BEATER, et al,

Plaintiffs

-against-

72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY,

Defendants

October 24, 1974
11:00 a.m.

PRESENT:

MR. DALTON, ESQ.
MR. BALBER, ESQ.
MR. MORRILL, ESQ.
MISS DUBOIS, ESQ.
MR. MELTSNER, ESQ.
Attorneys for plaintiffs

MR. SUMMERS, ESQ.
MR. DUNN, ESQ.
Attorneys for Transit Authority

MISS GOLD, ESQ.
Assistant Corporation Counsel for
Civil Service Commission
MR. ROSKIN, ESQ.

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* * *

BERT G. SCHLUTER, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORRILL:

MR. MORRILL: Your Honor, there is a short statement which is very non-technical as to Mr. Schuleter. Mr. Schulter is being taken somewhat out of order. He is one of our employer witnesses, so to save the time of

the Court and counsel I would like to introduce it and to use it as your Honor deems fit. I can take him through the statement or go over highlights of it.

THE COURT: We can do it the way we did the others. Let's have it marked and see whether it can be used for some or all of what he will testify to.

MR. MORRILL: There are just a few other things.

THE COURT: Fine.

xx (Plaintiffs' Exhibit 38 marked for identification.)

(Pause.)

THE COURT: I don't see any problem with this. Is this statement, Exhibit 38, what you will testify to if asked in the normal question and answer form?

THE WITNESS: Yes, sir, it is.

MR. DUNN: Counsel for the defendant has no objection to the admission of it.

THE COURT: Thank you very much, Mr. Schluter.

xx (Plaintiffs' Exhibit 38 received in evidence.)

THE COURT: Anything else?

MR. MORRILL: May I proceed with just three or four questions?

THE COURT: All right.

Q Mr. Schluter, in your statement you say that the sheetmetal industry is an extremely hazardous one. Can you just elaborate a little bit for the Court and tell us, first of all, if you do consider it a hazardous industry and in what way you consider it one?

THE COURT: What is the need for elaboration? He has got all of it here.

Q Mr. Schluter, can you describe for us how you first came to hire methadone maintainees for the joint apprenticeship program?

THE COURT: It is described in Exhibit 38.

MR. MORRILL: It is described very briefly, your Honor. I think this is relevant.

A In my selection of these candidates we give a physical examination. The physical examination is given by Executive Health Examiners here in New York City. As part of that examination I require a urine analysis. I was approached at that time by Miss Kornfeld and she asked me what I would do if methadone showed up in the urine analysis of one of these applicants. My offhand statement was that I would reject him.

THE COURT: I don't think anything is being added to this. He employed someone in an experiment. He employed people.

MR. MORRILL: Mr. Schluter's attitude was much like what the plaintiffs claim that the attitude of the Transit Authority was.

THE COURT: That is really irrelevant. That is just coloration.

Q The only other question I would have, then, and this is not in the statement, is this: do you intend to continue to hire methadone maintainees for the job apprenticeship program?

MR. DUNN: Objection.

THE COURT: Overruled.

A Yes.

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* * *

C H A R L E S D O U G L A S A D E S,

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MISS DUBOIS:

Q What is your present position, Mr. Ades?

A I am vice president and director of Urban Affairs at Chemical Bank.

Q How long have you been with Chemical Bank?

A Fife years.

Q What is the function of the Urban Affairs Division?

A Urban Affairs is designed to relate the Chemical Bank to the problems of primarily disadvantaged communities in New York City, and the poverty communities throughout the city.

Q And the what?

The pove[illegible]ommuni[illegible]hroughout the city.

Q As director o[illegible] Urban Affai[illegible] are yo[illegible]miliar with the Chemical Bank's policy regard[illegible]g employment of

persons with drug abuse history, including persons maintained on methadone?

A I am.

Q Have you been responsible with other offices of the bank for the development of the bank's present policy towards such persons?

A Yes, I have.

Q Have you also been responsible for the admission ofthat policy?

A Yes.

Q Have you been responsible for assessing from the bank's viewpoint the success or failure of that policy?

A Yes, I have.

Q What is the bank's policy regarding applicants for employment who have a history of prior drug abuse, including persons maintained on methadone at the time of application?

A The policy is that we look at everybody on an individualized basis. That policy is a change from a previous policy which was exclusionary, the policy at this point is that we will review every case on an individualized basis.

Q You say there was a change in the policy. When did that change take place and why?

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A The change in the policy took place approximately two years ago, maybe it was a year and a half ago. And it was that we began to hire ex-addicts in a program in the bank, and we realized that the policy about the employment of ex-addicts and the policy of treatment of current employees who were found to addicted would have been in conflict with the hiring of a group of ex-addicts, so we changed the policy to more nearly approximate the policy of the alcoholics.

Q Did you look at any other employers' experience with addicts?

A Yes. We looked primarily --

THE COURT: I will tell you, let's not get it too attenuated.

MISS DUBOIS: This is going to the particular experience of the employer that they looked at. It relates to the bank.

THE COURT: Pure hearsay. We are not interested in the Chemical Bank's policy as such; we are interested -- we are not trying the Chemical Bank's policy.

MISS DUBOIS: I want to know whether their reason was to help ex-addicts or whether their reason was based on a rationale assessing the hiring of ex-addicts --

THE COURT: That's not relevant, it is their policy and their experience, not what they found out about

somebody else's experience. Okay.

Q Could you describe the program when you initiated it, what happened? Did you hire some people, approximately how many?

A Yes.

Q And how were they selected?

A It was, I believe -- the policy portion of the program, that is the creation of the policy so that we could do the program, began in October of '72, and the actula hiring took place -- the first ones took place in February of '73.

We hired a group of ex-addicts who were screened by the Wildcat Service Corporation and we hired initially a group of twelve, one dropped out very early on, andthen we hired another one to replace that so we ended up with a group of 13 that were hired over a period of I guess about two months.

Q What did Wildcat screen for you?

A Wildcat looked at --

MR. DUNN: Objection, your Honor.

THE COURT: Sustained.

MISS DUBOIS: Your Honor, I want to know how the Wildcat screening process worked and how the bank's selection process worked. I can ask that.

Q What did the bank rely on primarily in selecting these people, what were the criteria?

A What the bank was looking for was avoidance of people with major personality disorders, we were also looking for people who had a degree of manual dexterity, and we were looking for people who were highly motivated and who had a basic reading level and math and so on.

Q What positions were these people hired into?

A Initially they were all hired into the encoding area. This is just a sort of factory type with a small computer operation. It encodes the numbers on the bottoms of the checks. They were there as a group for -- I guess the group began to break up at about six months. And they then moved out to other places in the bank.

Q Are there any limits on the positions to which they can be transferred or promoted?

A Conceivably, a person coming through there could go anywhere in the bank.

Q Have some been transferred or promoted?

A Yes. Let's see, six have been promoted. I am not that sure of the formality of that. Four have actually been promoted and two have gotten their salary codes increased, which is increasing responsibility.

Three went to the metropolitan bank, two became

tellers.

THE COURT: What is the metropolitan bank?

THE WITNESS: I'm sorry, the metropolitan bank is the branch system here in New York.

THE COURT: Went to branches?

THE WITNESS: Went to branches, that's right. Three went to branches, one of those persons is no longer with us. One became a teller, one became a file clerk.

Q Is a teller a position in which there is an opportunity to steal?

A Absolutely.

Q Have any of the employees in the group, including those that have been terminated, been involved in conduct involving theft of any kind or any serious problem for the bank or its customers?

A No.

THE COURT: One who is no longer with Chemical, was he discharged, resigned or what?

THE WITNESS: She was discharged because of attendance. Yes.

THE COURT: How have they done? Attendance, alertness, performance, any observations? Are they different orthe same as your general population? What about all that?

THE WITNESS: If I may, let me back up just a

minute and say of the 13 we hired a year and eight months ago, I guess it turns out to be, nine are still with us.

THE COURT: Nine still there?

THE WITNESS: Right.

The general observations of the direct supervisors were that the group tended to be a little more highly motivated, some of them were promoted early on in the game, and usually that doesn't happen for a year or two in that particular kind of job.

Initially there was an attendance problem on the part of several. That's been rectified. And the ones with whom it was not rectified are the ones that are no longer with us.

Q Mr. Ades, could I make sure for the record that if you look at the group as a whole in the performance of the group as a whole, including the persons terminated, and compare that to the performance of an average group of employees, how would you compare it?

A I think initially the group learned faster; in other words, they became productive employees, a little more quickly than the average employee. At this point, they are approximately the same as everybody else. Some are better, some are worse.

THE COURT: Are you saying of the -- out of the --

you had a total of thirteen?

THE WITNESS: That's right. And there are four cone.

THE COURT: Were the four all discharged for attendance problems?

THE WITNESS: No. The first one was discharged for drug usage, that was after about a month that turned up on the urine analysis.

THE COURT: How did you find that out?

THE WITNESS: We spot check urine analyses.

THE COURT: Your own medical department?

THE WITNESS: I believe we send it out to a lab but we do it the same way we do for people entering our employment. We screen all people.

THE COURT: Now, that's one, two.

THE WITNESS: Two were then terminated for attendance, approximately six to eight months after the initiation of the program, and then one was terminated I think about a month ago.

THE COURT: For what?

THE WITNESS: Attendance, I'm sorry.

Q But your testimony regarding performance included those four people?

A Yes.

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Q On your spot check urine analysis how does that work? How long do you do that for?

A There is no real policy on that at this point. We are sort of playing it by ear, and now it looks like we probably will do it two years.

THE COURT: Every two years?

THE WITNESS: No, no, I'm sorry.

THE COURT: For two years?

THE WITNESS: For two years we will spot check and the number of times varies upon the person's performance and the performance evaluations by the supervisors.

THE COURT: Has anybody given you any resistance to doing this?

THE WINTESS: No.

THE COURT: Okay.

Is this any trouble or expense for the bank?

THE WITNESS: No. I mean, it's a slight expense, but the mechanism is set up because we do the screening anyway.

Q Does the bank find it a reliable method of determining whether anyone is using illicit drugs?

MR. DUNN: Objection, your Honor.

THE COURT: I think that's been established.

Q Is your program limited to the group you have

already hired?

A No. We are looking now at the hiring of four--

MR. DUNN: Objection, your Honor. The witness is -- he is now testifying, as I understand it, to a proposed course of future activity.

THE COURT: Let me just get this clear:

The only methadone maintenance people-- these were all methadone maintenance people?

THE WITNESS: No, they were not. Some were, some were not. They were all ex-addicts who were screened by Wildcat Service Corporation.

THE COURT: I see, all thirteen were ex-addicts. Exactly what do you mean by that?

THE WITNESS: I mean they had all come through rehabilitation programs here in the city.

THE COURT: They had finished?

THE WITNESS: Yes.

THE COURT: And what kind of programs?

THE WITNESS: Drug rehabilitation programs.

THE COURT: Well, methadone maintenance or what?

THE WITNESS: Some were methadone, some were not. Most were not.

THE COURT: Well, would you be able to tell me how many were or had been through a methadone program and

how many some other form?

THE WITNESS: I believe -- I'm not clear on that, but I believe that three were on methadone.

THE COURT: Three had been on methadone?

THE WITNESS: Yes.

THE COURT: And were finished?

THE WITNESS: No, no, were on methadone when they came in.

THE COURT: Okay, three on methadone.

THE WITNESS: And I have to assume that many of them kicked the habit with the use of methadone. I mean, when you talk about being finished with --

THE COURT: Yes, okay.

THE WITNESS: I'm not clear.

THE COURT: I'm talking about -- I guess the distinction I'm drawing -- well, let's get this.

Your memory is that three were on methadone maintenance when they were hired?

THE WITNESS: I believe so, yes.

THE COURT: And then were the other ten --

THE WITNESS: Drug free at that time.

THE COURT: Drug free?

THE WITNESS: Yes, they were drug free at that point.

THE COURT: What I'd like to know, if you can remember, is:

Of the ten drug-free, they had all to your knowledge been through some kind of rehabilitation program, right?

THE WITNESS: Yes.

THE COURT: Do you know what kind of programs they had been through?

THE WITNESS: Barely. I know that some of them went through a thing called the West Side Community Drug Center. Others had been through the Rockefeller program.

The reason I'm unclear here is that we went to an outside organization, Wildcat, and asked them to screen for us, and so I didn't really get involved heavily in that, or involved in that really.

THE COURT: Okay.

MISS DUBOIS: My question, Mr. Ades, was in the middle of testifying as to what these banks plans for the future were. It was objected to and the reason I want him to testify to it is that it's been the Transit -- the Transit Authority has contested in this case that the only programs that exist are small pilot programs. I want to establish that Chemical Bank is planning to expand.

THE COURT: Just briefly and in general, what is your plan now?

THE WITNESS: It's the judgment of the senior management of that bank that we should continue to do this on a larger scale.

THE COURT: Have they -- they have not yet hired anybody in addition to the original thirteen?

THE WITNESS: That's correct.

THE COURT: Now, have they -- has the bank decided on the numbers that it will hire or try to hire?

THE WITNESS: No, I think at this point, that will depend a lot on what the labor market is. At this point, the turnover in the bank is very low, and therefore it is going to be difficult to place them, anybody, ex-addicts or not. I think that will dictate how many we hire. But there is no outside limit at this point.

Q Just a few questions on the bank's policy about current employees as opposed to applicants:

What is the bank's policy regarding use or sale of illicit drugs on bank premises?

A That's immediate termination.

Q Is there any rule regarding use or sale of illicit drugs off bank premises?

A No.

Q And obviously, from your previous testimony, I guess there is no rule prohibiting the use of methadone pursuant to participation in a program?

A No.

THE COURT: Let me get this clear. If there is a use of an illicit drug on the bank premises, immediate termination, right?

THE WITNESS: That's right. The use thereof on the premises.

THE COURT: Now, ifyou find that -- are there situations where you find that somebody who is now working for the bank is on a methadone maintenance program?

THE WITNESS: We have -- I'm not certain of that. I assume that that's the case. I know that we have found people who are currently employed by the bank who are not a part of this program who had been addicted to heroin.

THE COURT: I'm not talking about not having been --

THE WITNESS: Who are.

THE COURT: I'm talking about people who are.

THE WITNESS: Yes, who are.

THE COURT: So if you find somebody who is addicted to heroin, who takes it off the job, what do you

do with them?

THE WITNESS: It's the basic intent of the policy, and it states this, that it is the intent of the bank to rehabilitate, to assist in the rehabilitation of any employee.

Now, obviously, that --

THE COURT: That comes about on an individual basis?

THE WITNESS: Right.

THE COURT: In other words, you treat it individually?

THE WITNESS: Absolutely.

THE COURT: Now, I assume then that if you did find someone was on methadone maintenance, then you would treat him individually?

THE WITNESS: Yes.

THE COURT: Okay.

Anything else?

BY MISS DUBOIS:

Q Is this program modeled on the rehabilitation program you have for alconolics?

A Yes, it is very, very similar.

Q Has your alcoholic program resulted in extra costs or in savings to the bank?

A To my knowledge it's been a great savings.

Q Have any other banks in the city, to your knowledge, developed programs comparable to Chemical's regarding the employment of persons --

THE COURT: I will sustain the objection and it doesn't help me to find out that this is modeled on their alcoholic program, because I don't know what their alcoholic program is and I am not going to go into it.

MISS DUBOIS: I want to establish the alcoholic program does not cost the bank money.

THE COURT: I don't know what it is so strike the testimony about the Chemical Bank's alcoholic program and I am not going to hear testimony from this witness about what other banks do. Anything else?

MISS DUBOIS: No, your Honor.

CURRICULUM VITAE

CUSHMAN, Paul, Jr.

Birthdate: 2/4/1930
Birthplace: New York City

Social Security No.: 487-42-0497
N.Y. State Liecense No.: 84,359

EDUCATION:

1947-1951	Yale University (History & Literature)	B.A.
1951-1955	College of Physicians & Surgeons, Columbia Univ.	M.D.

POSTDOCTORAL TRAINING:

1955-1956	Intern in Medicine, Barnes Hospital, St. Louis
1955-1956	Assistant in Medicine, Washington Univ., St. Louis, Mo.
1956-1957	Assistant Resident, Strong Memorial Hospital, Rochester, N.Y.
1959-1961	Trainee, U.S. Public Health Service, Univ. of Rochester, N.Y.
1961-1962	First Assistant Resident, St. Luke's Hospital, N.Y.C.
1962-1964	Research Fellow, U.S. PublicHealth Service, St. Luke's Hospital, N.Y.C.
1962-1963	Research Associate, St. Luke's Hospital, N.Y.C.

RESEARCH & PROFESSIONAL EXPERIENCE:

1957-1959	Captain, Medical Corps, U.S.A.F., Active Duty
1960-1961	Instructor, Dept. of Medicine, University of Rochester
1962-1967	Instructor, Dept. of Medicine, Columbia University
1963-1971	Assistant Attending Physician, St. Luke's Hospital, N.Y.C.
1967- --	Consultant in Endocrinology, Knickerbocker Hospital, N.Y.C.
1962-1968	Endocrine Research Laboratory, St. Luke's Hospital, N.Y.C.
1967-1968	Associate in Medicine, Columbia University
1968-1971	Assistant Clinical Professor of Medicine, Columbia University
1964-	Asst. Physician, Vanderbilt Clinic, Columbia Presbyterian Hospital, N.Y.C.
1971-	Associate Attending Physician, St. Luke's Hospital, N.Y.C.
1971-	Assistant Professor of Medicine, Columbia University
1968-1973	Chief, Endocrinology Section, St. Luke's Hospital, N.Y.C.
1973-	Chief, Clinical Pharmacology Section, St. Luke's Hospital, N.Y.C.
1970-	Director, St. Luke's Hospital Methadone Maintenance Treatment

MEMBERSHIPS:

American College of Physicians (Fellow)
American Society of Clinical Pharmacology & Therapeutics
Endocrine Society
Sigma XI
American Physiologic Society
American Federation for Clinical Research
American Therapeutic Society
New York Academy of Medicine
New York Academy of Science
American Association for the Advancement of Science

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CERTIFICATION:

1956	National Board of Medical Examiners
1963	Americal Board of Internal Medicine

HONORS:

1961	Monroe County Pharmacy Annual Award for Research
1969	Henry E. Sigerist Annual Award
1973	Caleb Fiske Prize

OTHER:

1972	Scientific Advisor - National Council on Drug Abuse
1969	Buckley School Alumni Association, Vice-president 1973-
1972	Episcopal Mission Society member Board of Managers
1971	Sheltering Arms Childrens Service, member board of directors
1974	Spence School, trustee
1972	Community Service Society, member committee on Youth & Correction

CARL A. BEAZER, et al.,
Plaintiffs,
vs. 72 Civ. 5307
NEW YORK CITY TRANSIT AUTHORITY,
Defendants.

New York, October 25, 1974;
9.30 A.M.

Trial resumed.

* * *

P A U L C U S H M A N, JR., called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BALBER:

MR. BALBER: I have a copy of Dr. Cushman's curriculum vitae. I suggest we use that as an exhibit.

THE COURT: Yes.

(Plaintiffs' Exhibit 40 marked for identification.)

MR. BALBER: I also have a listing of Dr. Cushman's various research publications.

THE COURT: Why don't you staple them together?

MR. BALBER: As the vitae indicates, your Honor, Dr. Cushman is a board certified internist. He is also an endocrinologist.

THE COURT: What is an endocrinologist?

Q Doctor, why don't you explain?

A He deals with glands, their secretions, factors affecting glands such as setromones, insulin, growth, thyroid, ACTH, hormones, and glucheon, among others.

Q What relation to body function do these glands and secretions play?

A Glands secrete the substance which is then transported by the bloodstream to another cell or organ, at which point it does something in that cell or organ and we study the functions of the glands, the hormones that they secrete and functions of those cells that are responsive or receptive to the hormone that reaches it.

THE COURT: Exhibit 40 consists of your background and the list of your publications?

THE WITNESS: Yes.

THE COURT: Exhibit 40 is received.

(Plaintiffs' Exhibit 40 received in evidence.)

MR. BALBER: I would just like to indicate to your Honor as to that exhibit Dr. Cushman has published

a number of articles in the area of effects of methadone on the body. I think those publications begin on page 3. They are interspersed somewhat with the other publications.

THE COURT: All right.

Q Dr. Cushman, is the treatment of diabetes within the field of endocrinology?

A Yes, it is.

Q Have you done original research pertaining to diabetes as well as methadone maintenance?

A Yes. I have to be very modest: there is one paper on that subject. That has not been my major field in endocronoloy, however.

Q Your curriculum vitae indicates you are engaged in teaching activities. What do you teach at Columbia Medical College?

A I am Assistant Professor of Medicine in the Department of Medicine. I teach internal medicine in general. I also teach endocronology to medical students and to postgraduate students, interns, residents, fellows at St. Luke's and at Presbyterian Hospital.

Q Your vitae also indicates that you are Director of the St. Luke's Hospital Methadone Maintenance Clinic?

A That is right.

Q And you have been so since 1970. How many

patients are enrolled in that clinic?

A Presently 287.

Q Have you had the opportunity to observe the response of these patients to treatment on a clinical level?

A Yes, rather frequently, like five days a week for four and a half years.

MR. BALBER: Your Honor, I submit that Dr. Cushman is qualified as an expert in the field of methadone maintenance and drugs.

THE COURT: It is amazing when you ask me to do that. Am I supposed to certify him?

MR.BALBER: It is the Court's practice in a proceeding, but whateverprocedure you would like to use.

THE COURT: I don't know all this. I will hear the witness.

How long have you been head of the methadone maintenance treatment clinic at St. Luke's?

THE WITNESS: Four and a half years.

THE COURT: How long has that treatment facility been in operation?

THE WITNESS: Eight and a half years.

THE COURT: You have been with it for four and a half; right?

THE WITNESS: That is correct.

THE COURT: How long has methadone maintenance treatment been used?

THE WITNESS: It was introduced in 1964 with a handful of patients and has expanded, first rather slowly and then expanded rapidly in the late 1960's and early 1970's. Approximately 36,000 New Yorkers are on methadone maintenance at present.

THE COURT: When would you say it began to be used on a wide scale or whatever scale it is being used today?

THE WITNESS: In the late 60's, 1969, 1970 most cities and states recognized that this was an important advance over the then existing treatments in narcotic addiction and instituted methadone maintenance of one variety or another in their respective loci.

THE COURT: Before 1969 was it more or less experimental?

THE WITNESS: Yes, first very experimental. Then a pilot study was made on a larger scale. Then when the pilot study seemed to indicate that it was useful for a wide variety of volunteering narcotic addicts, then a rapid expansion was undertaken.

THE COURT: And you say 36,000 people in New

York City are now on methadone maintenance?

THE COURT: That is correct, yes.

Q Dr. Cushman, does maintenance on methadone have any side effects that are observable on a clinical level?

A You can observe occasionally some sweaty changes in the head and scalp of the patients, but by and large, it would be very difficult to pick out a methadone maintained patient from a normal patient or a normal subject just by observation alone.

Q Does maintenance on methadone have any side effects that are reported by patients?

A Yes, patients do report side effects. They are quite commonly encountered. The most frequent is sweaty changes in and about the head and shoulders, others would be constipation difficulties and sleep, occasionally anxiety, difficulty of --

THE COURT: You say constipation difficulties, what did you say about sleep?

THE WITNESS: Disturbances in normal sleep patterns. Most frequently, difficulty in falling asleep, insomnia or waking up too often, disturbed dream patterns, frightening dreams, and so forth.

Q Is the frequency of these side effects dependent upon length of time and treatment?

A Yes, very much so. The new patient arriving in treatment, as I am sure you know, starts off on a relatively

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low, small dose and then this dose is built up in a course of about six weeks to his maintenance level. During the course of this medication increase in increments, he may experience some side effects of the methadone itself, such as somnolence, such as sweatiness, such as the constipation and the like.

But after about eight, ten, twelve weeks, most patients then stabilize, they develop tolerance to the effects of methadone, tolerance is, of course, the ability to accept without difficulty a dose which before they had past exposure to methadone, would have produced extensive effects such as sleep or even lethal effects.

Now, after three months or four months, most patients become tolerant to the narcotic itself to a greater or lesser extent. Then after a year or two, most of these side effects disappear. Most patients report that they have no problems at all referrable to methadone.

Q When these side effects do appear, to what extent are they disabling?

A Well, I don't think sweatiness or constipation or trouble in sleeping are disabling symptoms. They are perfectly capable and are functioning even if those symptoms are present and even if they are quite marked.

Q To what degree is the constipation controlable?

A Oh, laxatives and enemeta -- enemas.

Q Doctor, does maintenance on methadone have any adverse physiological side effects?

A This was, of course, very important in the early stages of methadone's development; and a systematic search for physiological side effects was made. This was done in two ways:

Population of patients who were on methadone were surveyed to see to what extent they had abnormalities and another population was studied twice before they studied methadone and then after they had been in treatment for various periods of time. The latter is the longitudinal study, the former, cross section study. The search was hematologic, gatrointestinal.

Q Would you define those terms?

A Hematological, like the blood-forming system, like the bone marrow, or blood vessels. Gastrointestinal would be the function of digestion, stomach, pancreas, liver function. Cardia, heart functions. Pulmonary, renal, which is, of course, kidney. Endocrine, psychological and neurological.

A great deal of data were obtained and some spotty findings were elicited. By and large the preponderance of the data indicated that these patients did not differ

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from themselves after they had been placed in methadone treatment, that is, the longitudinal study showed no difference from the start to a period three years after continuance of methadone use.

THE COURT: What was the start, when they were on heroin or what?

THE WITNESS: Yes, right, so they would come in already with a preconditional narcotic effect, namely, that induced by the heroin they had been consuming prior to treatment.

THE COURT: So you're comparing a man who was taking heroin with a man, the same man, after he was well into the methadone treatment?

THE WITNESS: That's right. Also, of course, the cross sectional studies would compare men on methadone maintenance with appropriate control populations.

Q These would be non-methadone maintained?

A Non-methadone maintained addicts, they would also be normal subjects who were of similar ages and ethnic distributions and the like.

Q What did that analysis show?

A Which of the ones?

Q The comparison of the methadone maintained person with the person who has never been an addict in terms of--

A Well, you would find some abnormalities then. They are primarily in the hepatic or liver area, increased incidence of --

THE COURT: Let me see, we are talking about the --

THE WITNESS: Cross section.

THE COURT: Cross section study. What I would be interested in, what I assume you're talking about, is comparing a man or woman whose well into methadone treatment with somebody similar who is not on any drug at all?

THE WITNESS: That's right.

THE COURT: Okay.

A (Continuing) You would find some abnormalities in their liver functions, particularly the serum enzymes that are believed to reflect liver cell injury. SGOT alkaline mosphatase are the principal findings. Increase in total serum, proteins.

THE COURT: You're still talking about the liver?

THE WITNESS: These are believed to be liver function tests, right. Increased total serum proteins and increased amounts of serum albuminus are rather common in this population of patients.

THE COURT: What does that do to somebody?

THE WITNESS: Well, it would depend on how high the liver enzymes were, and how ill the person was in general.

Most of the patients who have these have a modest or slight increase over the norm. This in itself would not interfere with that individual's function.

Q Can you summarize then, Doctor, to what extent are thse liver abnormalities you have just described disabling to a methadone maintenance patient?

A The usual method of methadone maintained patient with these modest changes is not disabling as a result of his liver abnormalities.

Q Doctor, I take it you just described, and correct me if I am wrong, the effect of methadone, and I take it, were you also describing long-term effect of heroin on the body?

A Yes, I really didn't mean to imply that these were related to methadone itself. The explanation of these abnormalities, most people consider to be a residual of viral hepatitis or some other hepatitis that the addict acquired at some point during his course of injections of heroin or--

THE COURT: You mean the liver problems?

THE WITNESS: Or other drugs, right. If methadone itself induced these abnormalities, you would expect those individuals who started treatment without increases in their serum liver enzymes to show increases in their serum liver enzymes after methadone treatment had been instituted for an

appreciable period of time. That has not been observed. So I think these are residual of viral diseases encountered at some point in the addict's past, probably a chronic persistent hepatitis, indolent, of low degree of morbidity, just there.

Q Doctor, if a diabetic is engaged in a treatment regime, what is the likelihood that he will become subject to the clinical manifestations presented by the undiagnosed or untreated diabetic, and I suppose you will have to describe what those symptoms are if indeed he might be subject to them.

THE COURT: I don't understand the question.

MR. BALBER: I can break it down, your Honor.

THE COURT: All right.

Q Doctor, what kinds of clinical pictures, physical symptoms, do you see in undiagnosed or untreated diabetes?

A Most commonly, it is individuals who are losing weight, eating more food than usual, drinking more than usual, passing more urine which of course is enriched with glucose, and therefore being excreted in large amounts, waking you up at night to pass urine. That's one mode of expression.

Another is acidosis, which is a metabolic emergency where the blood PH falls and the blood sugar rises sharply. These individuals if untreated go on of course to coma and

death.

Another is coma due to increased amounts of glucose in blood, hypersmotic state where the body has lost fluid.

THE COURT: I will tell you --

A (Continuing) These are --

THE COURT: I think we are trying to work through a lot of material as quickly as we can, and I need to get the main points so I could get the picture, and as interesting as they are, I can't --

Q Dr. Cushman, why don't you simply describe physically, any disfunction in layman's terms, what happens to the diabetic, how does he fell, how does he function, if he isn't treated.

THE COURT: He loses weight, he passes more urine, he sometimes has a coma, he sometimes dies.

Q Is that a whole picture, Doctor?

A That will do.

Q If a diabetic is engaged in a prescribed regime of treatment, what is the likelihood that he will become subject to the clinical manifestations of the untreated diabetic that you have just described?

MR. DUNN: I object as to relevance, your Honor.

THE COURT: I am not quite sure, but I will take it.

A There is a probability that he will show these

effects, yes. It depends on the kind of diabetes and the circumstances that may arise.

If a person develops an infection or a stress, in many instances the diabetes would go out, the blood sugar would rise, it would go along with the pathway of hyperglycemia and acidosis and so forth.

Q Does the presence of diabetes, even if it is treated, have any general effect on body systems, body functioning or longevity?

A Oh, yes.

MR. DUNN: Your Honor, I most strenuously object to that question.

THE COURT: I overrule the objection.

Q Complete your answer.

A Oh, yes, vascular changes occur, increased mortality, increased incidence of heart disease.

THE COURT: What vascular changes?

THE WITNESS: Strokes, heart attacks, atherosclerosis.

Q What is that, Doctor?

A Hardening of the arteries. A whole long list of them.

THE COURT: In other words, the man with the diabetes even in treatment is still in a good deal more dangerous

condition than the non-diabetic?

THE WITNESS: Yes.

THE COURT: Anything else?

MR. BALBER: This concludes our evidence in chief of Dr. Cushman.

The Transit Authority defendants in this case have indicated that they plan on introducing into evidence the complete methadone maintenance treatment records of the named plaintiffs which were produced pursuant to the Court's order.

Now, those records contain urinalysis reports, and they do contain some ambiguities, and rather than having to call Dr. Cushman as a rebuttal witness, to save the Court's time, I thought, I've got five minutes worth of questions regarding his experience with urinalysis records in drug treatment programs and just what they mean.

Q Dr. Cushman, does the St. Luke's clinic conduct routine drug detection urinalysis?

A Yes.

Q Are you familiar with the techniques used in these analyses?

A Yes.

Q Are you familiar with interpreting these results?

A Yes.

Q Is a positive urinalysis for quinine alone indicative of drug abuse?

A No.

Q Can you explain why not?

A Quinine can get into the urine as a result of other means than just using it as a ingredient for narcotic injection. Cold tablets contain quinine, gin and tonic is of course a source of quinine, I think my urine would have quinine in it if it were surveyed in the usual way.

Q Doctor, what urinalysis technique is used at St. Luke's?

A At present, it is an EMIT system.

Q When was that system adopted?

A I believe about four or five months ago.

Q What technique did it replace?

A A thin layer chromatography system.

Q Now, is the St. Luke's clinic affiliated with any larger treatment program?

A Yes, the Beth Israel Medical Center.

Q Was the change from the thin layer technique a general change throughout the Beth Israel system?

A Yes, it is.

Q And was that technique in use in other Beth Israel clinics until the time of the change?

A Yes.

Q Doctor, did the thin layer of chromatography test in use until the time of the change you have just described ever indicate that an individual was abusing drugs, in other words, did it ever, for example, show a positive test for morphine when the person being tested was in fact not using drugs?

A Well, there are substances, which can interfere with the thin layer chromatographic --

THE COURT: Was there a change because the chromatography test was sometimes inaccurate, is that basically it?

THE WITNESS: That's it, yes. Increased sensitivity, increased specificity.

THE COURT: What's the name of the new test?

THE WITNESS: EMIT. It's an immunologic test.

THE COURT: Okay.

Cross examination.

CROSS EXAMINATION

BY MR. DUNN:

Q Good morning, Dr. Cushman.

Dr. Cushman, you have been testifying about methadone programs, part of your testimony. Are all methadone programs structured the same with respect to dosage administered to a patient?

A No, they are not.

Q Would you describe the various types of regimens that are followed in the methadone program?

A Most of them adhere to the original Dole-Nyswander system in which a large amount of methadone is administered than would be necessary strictly to keep the person out of withdrawal syndrome. This amount would be also sufficient to produce some cross tolerance to the effect of heroin so if the individual lapses to heroin use he would get less of an effect from that heroin.

Other programs do not see the need for larger doses and have tended to use smaller doses. Quantitatively speaking the smaller doses are around 40 milligrams and the larger doses are between 80 and 120 milligrams. This describes the state of affairs but generally the first six months or a year of treatment. After that period of time, a stabilized patient who has discontinued heroin use, even in the higher dosage treatment centers is on reduced the dose to a level that's consistent with the patient being comfortable.

Q There are basically two ties, the high does and low dose form of methadone treatment?

A Right.

Q Does your experience encompass both type of programs.

and will you describe what your association has been with each type of program, the high dosage and the low dose.

THE COURT: Can I go back, maybe I missed something. The low dose program, you're talking about after sort of what we call the long run, after the person has been in the initial stages of this and he's on the regular regimen, right?

THE WITNESS: Right.

THE COURT: Now, what would the low dose be?

THE WITNESS: Generally around 40 milligrams, but there are some low dose programs that started off on 40 milligrams, reasoned that the least amount of methadone necessary to keep the individual comfortable was what should be used.

That particular collection of experiences didn't indicate ready patient acceptance.

THE COURT: I just wan t to get the amounts.

The norm, the regular low dose program is about 40 milligrams?

THE WITNESS: Right.

THE COURT: And the regular high dose would be about what?

THE WITNESS: 80 to 100, and prior to some federal regulations, up to 120, 150 milligrams.

THE COURT: Okay, now you go ahead.

Q And have you been associated with the high dose programs?

A The clinic I run uses higher doses initially, right, so therefore it would be a high dose program.

Q Have you been associated with the low dose programs?

A Not in a direct supervisory or direct way, but I am aware of what they are doing.

THE COURT: Did you say you used high doses initially?

THE WITNESS: Yes.

THE COURT: Do you go to low doses?

THE WITNESS: Then after the person has reached his point of stability, and after a year or so in treatment, we reduce the dose to the level that is consistent with a patient feeling comfortable and retain functional status.

THE COURT: Generally what are those doses that you give after the year?

THE WITNESS: Well, they range quite widely from 2 milligrams to 100, depending upon the individual requirements.

BY THE COURT:

Q So, it isn't really a high dose or a low dose, it is whenever it is necessary?

A After the initial stage of getting the patient out of the heroin-using category to the category of methadone maintenance as the sole narcotic.

Q This takes about how long?

A It varies with the individual patient. Occasionally it can be done in six months or eight months, but more often a year or two before the dosage can be brought way down.

THE COURT: Okay.

you said that this could go on during the initial breaking-in period.

A Yes, right.

Q I don't know that you said drowsiness. You said interference with sleep patterns, insomnia?

A Yes. Drowsiness as a result of methadone does occur especially as the dose is increased initially, but the users would ge tolerance to that and it disappears.

Q How long would you say it would take for the fellow to get tolerant?

A Oh, a few weeks up to two or three months.

Q Is there any unknown -- I mean, is there a situation where there are things that are just imponderables that you really can't measure that might be going on in somebody who is taking methadone that makes him different from a person who has never had a heroin history and did not need methadone?

A Yes, that certainly is true. What has been done is to take the currently available tools and apply them to this patient, populations of these patients and make judgments on the basis of the measurements made. In accordance with our present battery of tools, we have come up with just a few spotting findings here and there as far as abnormalities in the methadone maintained population.

There may be others that we may not know of.

Q Do you observe a lot of these people?

A Yes.

Q How many methadone patients have you seen?

A Oh, God, they are in the thousands.

Q Let's take the total picture of the total person. This is a man who has been on heroin. He has become an addict. Right?

A Yes.

Q And he has been addicted to heroin for at least two years or so; right?

A Yes.

Q Then he comes in and he is doing his best to get cured and this is the way he does it?

A Yes.

Q Is there any way without just going into descriptions of thousands of individuals, is there any way that you could generalize fairly about these people versus the non-drug people? You know, the point of this case is to figure out whether the Transportation System should be hiring some of these people?

A Yes.

Q That is the whole point?

A Right.

Q You have observed, you say, thousands?

A Yes.

Q What could you tell me about how they are versus the comparable non-drug people, or maybe you can't answer it.

A In most respects they are too indistinguishable to comparable non-drug people. Comparable non-drug people have mental disease, liver disease, this and that, so there will be something similar in patients on methadone treatment.

As for whether you should hire such a person, much depends on that particular person's credentials for the job. I wouldn't think that his position on methadone treatment should be any influence in itself as to whether he should have a job.

Q How about the fact that he has been a heroin addict in the past and he still has to take an addictive drug to keep himself. Doesn't that to you present any risk at all? That is a unique risk different from the risk that people who do not have that situation, isn't it?

A As a potential employer you think possible absences because of needing to go to his treatment center, tardiness in showing up for the job, difficulty in taking sudden trips to parts of the country and the world without

arranging for methadone. Those would be things that I would consider if I were a potential employer.

Q Or promptness, alertness, ability to --

A Handle the challenges.

Q -- handle the challenges, to do electric circuit work, welding or repairing on the cars?

A Right.

Q Whatever has to be done?

A No difference between a normal subject and the methadone maintained patient after he has been stabilized on his methadone.

THE COURT: Anything else?

BY MR. DUNN:

Q What effect, if any, does methadone have on neuro-transmitter biosynthesis?

A Well, there are several neuro transmitters.

Q Biosynthesis of neuro transmitters?

A This is a thorny area. You can show differences--

Q May I interrupt? Do scrambled eggs have any effect?

A No, none of which I'm aware.

Q Will you describe the effect, if any, of methadone?

A There are several neuro transmitters, acteylcholiaiae, serotinon, and there is catechol mains.

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* * *

EILEEN WOLKSTEIN, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. BALBER:

Q Miss Wolkstein, what is your current position of employment?

A I am director of Vocational Rehabilitation Department at Beth Israel Medical Center, working in the methadone maintenance program, the alcohol treatment program, and the drug detoxification service.

THE COURT: You are director of what?

THE WITNESS: Of the Vocational Rehabilitation Department.

THE COURT: What programs at Beth Israel?

THE WITNESS: The methadone maintenance program, a comprehensive alcohol treatment program, and the drug addiction service, which is a short term heroin detoxification unit.

THE COURT: Okay.

Q And how long have you held that position?

A I have been at Beth Israel for six years.

Q And what is your professional training?

A I have a bachelors degree in sociology, I have a master degree from NYU in vocational rehabilitation and I am a doctoral candidate in vocational rehabilitation at NYU, presently completing my studies.

Q Do you have staff members?

A Yes, my staff consists of 16 professional vocational rehabilitation counselors. These are all people who have a minimum of a masters degree in vocational rehabilitation and approximately two years of post-graduate work experience.

Q Now, Miss Wolkstein, for the rest ofyour testimony I'd like to limit your answers to services you provide to methadone maintenance treatment programs, because that's what is most relevant to this case.

A Okay.

Q Can you describe what the duties of your position are, generally, what functions you perform for the methadone maintenance treatment program?

A Well, I am responsible for setting up the vocational rehabilitation department which what I did six years ago when I came to the hospital. My primary responsibility I guess would be a combination of responsibility for the administration of the department and the clinical services that are provided to the patients.

Most of the direct patient contact at this point goes on through my staff, but I am personally responsible for coordinating all the activities which means developing resources for education, training, jobs, bringing that back to my staff to distribute to the patients, I am responsible

for the clinical supervision of my staff. I am involved in research activities designed to evaluate the effect of our services, and what is going on in vocational development of our patients.

I work with employers in establishing employment opportunities and in general education function in helping people understand the nature of the methadone maintenance, the ability of our patients to be employed, the problems that are inherent in that.

Q And how large is the Beth Israel program?

A 6,500 methadone patients, approximately, are in treatment now.

Q How many separate clinics?

A I think 27, distributed throughout the city.

Q Now, you have described in general terms what you do. Can you describe in more specific terms exactly what services are delivered to the patient by your staff?

A The staff works directly in the out-patient clinics, and they provide -- they have a number of activities.

Number one, they act as a consultant to the staff in the out-patient clinic, which would involve -- well, perhaps training the staff in developing their ability to identify vocational problems and vocational strengths thatthe patients have.

Training the staff in the utilization of vocational resources, these are the resources that I mentioned that I assemble and then distribute to the staff and they help the sources in the clinic use the material. They see patients on an individual basis on referral from the counselor on the request from the patient and then work with the individual on an ongoing basis to try to understand what the person wants to do vocationally, what their background is, what their goals are, and develop a treatment plan that will help the person realize particular goals.

They may run vocational groups, they do run vocational groups. They are also involved in some ways in research or investigating what is going on in the clinic vocationally, what progress patients are making.

Some of them do job development, developing community resources. They really try to encompass as broad a specturm as possible in the business community, the patients, treatment and bringing it all together to the advantage of the individual.

Q You testified earlier, I believe, that part of your responsibilities are to place participants in job positions. Now, can you describe the process by which you accomplish this? What do you do? Do you work out relationships with employers? Just how does it happen?

A All right. It happens -- it starts with I guess basic orientation that I have the goals that we are tyring to achieve, namely, the rehabilitation of our clients.

I see my function in the way that I go in and approach business is kind of as a linkage between the business community and the patients, and effecting communities that will meet their mutual benefits.

So, what I may do is approach a company, either that I may select or I know for some reason represents an area of interest of our patients, and will aproach, perhaps, the medical director, the personnel people, and try to engage them in dialogue to explain to them what our program is about, what our patients are about, their abilities to work, why we are trying to work in the whole area of vocational rehabilitation, what it means in the treatment process, and then discuss with them some of their apprehensions, their questions, their lack of information, and educate them to what we are doing, become sensitive to their needs, and then try to affect a relationship that's mutually satisfactory to both of us in terms of what my role is going to be, how I can help them, what their role is going to be, and then how an applicant will gain admission to their company.

Q Can you give us examples of employers with whom you have established such relationships?

A Yes. Well, Consolidated Edison, Equitable Life Insurance, J.C. Penney, think of some of the bigger companies, Seagrams, Beth Israel Medical Center, several other hospitals, Flower Fifth Avenue, Columbia Presbyterian, Grosvenor Health Center, McGraw Hill, Metropolitan Life, New York Life.

Q You mentioned some other hospitals before?

A Columbia Presbyterian, Flower Fifth Avenue, Grosvenor Health Center, various agencies within the city government, and numerous small employers.

Q What type of industries or services?

A Printing industry, chauffeur services, car services, taxi -- that's not small --

THE COURT: Taxi companies?

THE WITNESS: Yes, both private and taxi commission, I guess.

Q Medallion cabs?

A Medallion cabs, thank you.

Plus private chauffeur limousine services.

Q Have you made any attempt to follow up or do you make any attempt to follow up the job performance of persons that you place?

A Yes. We really -- I see that as a very intregal part and that our job is really only half done when somebody is hired by a company and it is really our responsibility

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to the patient and to the company to do whatever we can to make sure that the person's entrance and functioning on the job meets the company's standards and meets the patient's needs, so we try to do follow up as long and as extensively as is possible.

For example, if we place somebody on a job and help them get a job, we will make arrangements with them to see them on a weekly or every other week basis to discuss with them what is going on, to communicate with the employer and try to really help the process along, realizing that there may be problems at first, and are available to work on these in whatever way is possible.

Q Do you provide employers with evaluations pertaining to people in your program who are applying for jobs?

A Yes. This is usually part of our negotiations with an employer where we will agree upon what kinds of information we can, within the boundaries of confidentiality and patient rights, we can share with the employer. We always get the applicant's permission to do that.

But we will share certain things like a person's summary, a clinical evaluation which will be a kind of personal social vocational summary, medical documentation that may come from the unit director physician in charge of the clinic and/or a psychiatrist. That's pretty standard,

the kind of entry information and when I will refer somebody to acompany I will send this and then they will review it and then call the applicant in for an appointment so that they have the background information and know as much as possible from documents as they can before they see the person.

Q Other than that initial evaluation, if an employer desires further information, do you make any attemp t to mkae that information available?

A Yes, again, that's with the patient's permission and in accordance with what we do, but our effort is not to hold anything because that's really just detrimental to everybody and whatever can helpt the employer to do his job, the applicant, the employee do his job.

THE COURT: Let's get more specific. What would you be willing to -- what information would you be willing to give, periodic information about the applicant or the patient?

THE WITNESS: If the person say is working for the company, has gotten a job, I may get a phone call from a personnel department so and so was late to work two days this week, it may be aproblem, will you look into it, and I would say "Yes," I would get in touch with the client, have one of my staff members who is responsible for that clinic see the

patient, discuss with him what is going on, what the nature of the problem was, if any, tell him how this is, you know, potentially injuring his employment, and then I will get feedback from the person and then I will call the employer and tell them what our interview with the client is, has come up with, what we feel the nature of the problem was, what we hope to do about it, and share that kind of information.

So maybe on something like that a person may -- I think that is sufficient.

Q With respect to job applicants, will you furnish an evaluation to employers as to whether or not the applicant has been drug free for a specified period of time.

A Absolutely. Absolutely, that's part of -- that usually goes into the medical letter as well as my staff's clinical evaluation.

Q Miss Wolkstein, have you made any attempt to sytematically study the job performance of persons you have placed?

A Yes. Currently involved in a study right now, half ofit or three-quarters of the data is probably available.

Q Under whose sponsorship is this study?

A We felt it was really important to have some kind of documentation and evidence and look more closely at what we are doing, not only from our side, but from the employer's

side. And the industrial medical society has a drug council. Dr. Doyle, who is the medical director of Con Edison is head of that. He was in touch with Dr. Dole from Rockefeller University, Rockefeller Institute, and they agreed to establish this pilot project and Dr. Dole assigned me to be his representative to the project. And what --

THE COURT: The Con Ed man, what's his name?

THE WITNESS: Thomas Doyle, he is the medical director and I think first vice president of Con Edison and is also president of the Industrial Medical Society. I am not sure if it is the whole society or the Drug Division.

THE COURT: In other words, he and Dr. Doyle decided to make a study of the results of employment?

THE WITNESS: Right, of a pre-screening capability, which would be my part, educating industry which would be, I guess,my part, and --

THE COURT: Your function generally, you said before, and I didn't get it in my notes, Dr. Doyle asked you to do what?

THE WITNESS: Dr. Dole.

THE COURT: Dr. Dole asked you to do what?

THE WITNESS: To represent him, which would be the patient representation to this project.

THE COURT: Now, when was this initiated?

THE WITNESS: April of last year, April '73 was the first meeting.

THE COURT: Are you finished?

THE WITNESS: Well, it's ongoing but we are tabulating the first year's results at the present time.

THE COURT: The year being what?

THE WITNESS: I think the first person was hired in June or July of 1973 and we are having statistics up until September of '74, so it's actually a year and three months.

THE COURT: Well, is this going to be -- is this study -- are you still in the process of working out your conclusions and tabulations?

THE WITNESS: We have feedback on 26 of the people who were hired to date. That's been tabulated.

THE COURT: Twenty-six out of what?

THE WITNESS: I think that's 35 or 40 who have been hired. The agreement was to try to have 50.

THE COURT: I don't understand, was this a hiring that was just part of the study project specifically for the study project?

THE WITNESS: Specifically for the study, right. Seven companies agreed to participate, and they agreed to

collectively hire approximately 50 people.

THE COURT: And this was in addition to their regular hirings which had been going on for years?

THE WITNESS: Right. It brought in some new companies who had not hired, but for companies where there was already a relationship, it was to be done in a systematic way and to really get feedback from supervisors and put it in the form of a study.

THE COURT: Now, you say they agreed to hire how many?

THE WITNESS: Well, they spoke about 50 patients between all of them.

THE COURT: And they actually hired what?

THE WITNESS: Approximately 40.

I think 35 to 40.

THE COURT: When will your study be completed?

THE WITNESS: I would hope very soon. We are really in the process of tabulating the results now -- I think Dr. Doyle hopes to publish it or I'm not sure what the intentions will be. I would imagine it will be done by early in November. I would hope it would be done.

Q What do your tabulated results indicate today on those 27 persons? Incidentally, were those 27 persons handpicked or --

A 26.

THE COURT: It was 26?

THE WITNESS: Yes, they were handpicked --

Q No, no, are they some special 26 from the 40?

A No, the first 26 that the reports came in on.

The reporting has been done by the emploiyer and by -- we have gotten follow-up by the employer and we have also interviewed each of the employees and administered a questionnaire to them and gotten information from them, and this was really get as much information as we possibly could from all sources.

Q What have your tabulated results to date indicated?

A Of the 26 that I have so far, 22 are still employed. Ore person was fired for lateness, repeated lateness. His performance was fine, it was a problem with being on time.

Two people left to go to better jobs, or jobs they felt offered them more security, and did it appropriately, there was no problem with that, and one person left, is now working again, but left again of his own vocation.

The feedback on the reports we have h ad asking about absences and latenesses. For these 26 people, the results were, the highest area was above average, meaning that they had fewer latenesses and absences than a comparable non-addicte employee.

Q There was some control, they were matched --

A It was not a rigorous control, but in the supervisor's and the personnel's thinking about it, they had a control group, it was not a rigorous study so that for each person there was another, other than at Equitable Life and there they did it rigorously, so that the absences and latenesses, the most significant category, was that they did better than average, ranged between average and better than average.

There were very few incidents of below average.

THE COURT: You say "most significant." I don't understand.

THE WITNESS: Well, I don't remember the numbers, but for example, out of 26, 16 people did better than average, and then you might have another five who did average, and then maybe one who did less than average, so that that -- the largest number fell in the category of better than average.

Q That was on attendance now?

A Absences and latenesses.

Q How about as to job performance?

A Job performance was clearly average to better and in most cases better. The same was true in -- we asked questions about medical complications, and there were no

outstanding other than the usual colds, illnesses that people have, there were no outstanding medical complications, and the only problem that anybody had was someone got dizziness. There were no accidents that were reported.

MR. BALBER: That concludes our direct examination.

THE COURT: I don't know particularly very much about these 26 people.

THE WITNESS: I think--

THE COURT: How long have they been on methadone; what jobs they had.

Q What screening criteria did you apply?

A We agreed that all these people before -- initial requirements were they would be on methadone maintenance treatment for a minimum of nine months, they would have been free of any drug abuse and only using methadone for six to nine months. In most cases it was nine months.

They had to have demonstrated the ability to work and have had a job for the most recent six months; in other words, they couldn't have been out of work for a year. Most ofthem were working at the time and wanted upgrading promotions, and more stable jobs.

They had to have had a very recent significant work history. There could be no outstanding medical problems. By outstanding, I mean that would require surgery or any

corrective procedures and there could be no outstanding psychiatric problems; no evidence of psychosis or overt behavioral problems.

Those were the initial criteria that we all agreed upon. The companies then had some of their own criteria, but they were mostly internal details.

THE COURT: What companies?

THE WITNESS: The seven companies were Con Edison, Equitable Life, New York Life, Metropolitan Life, J.C. Penney, McGraw Hill and Seagram.

THE COURT: What were these people given to do?

THE WITNESS: The jobs ranged from oh, their -- from I guess semi-skilled or technical jobs, for example, at Con Edison, which may be machine operator, there is one woman working there watching meters.

THE COURT: They had the Chemical Bank Company come in and they hired a group of people to put the numbers at the bottom of checks, which is not the most imposing job in the bank.

THE WITNESS: I think I can be more specific.

There were people, for example, who worked at Con Edison on the street crews, with the hard hats, etc., and were out doing physical work.

THE COURT: On the street?

THE WITNESS: On the street crews.

THE COURT: Don't you know specifically what each one of these 26 did?

THE WITNESS: Yes.

THE COURT: Can you go one by one?

THE WITNESS: I don't think I can remember them all.

THE COURT: What do you remember?

THE WITNESS: I have it with me.

THE COURT: Why don't you get it.

THE WITNESS: It's in my briefcase.

MR. DUNN: Your Honor, may counsel examine any document the witness uses to refresh her recollection?

THE COURT: Sure, of course you can.

THE WITNESS: Okay, I have the occupational categories where there were seven which were -- this category at Con Edison is general utility is the word that they use.

THE COURT: How many of the 26 went to Con Edison?

THE WITNESS: 13.

THE COURT: And what did they do?

THE WITNESS: All right, it's hard to be specific. All right, I'm trying to think of specific people. Several of them continued to work on the street crew doing maintenance I think that's three. One is working as a computer programmer at Con Edison. One woman is working on the tower watching

the meters.

THE COURT: One on the tower watching meters? What does she watch?

THE WITNESS: As far as I know, they keep levels of pressure, and it has to be monitored regularly, and dials adjusted.

THE COURT: These are control towers?

THE WITNESS: These are control towers, pressure boiler plants, right, at one of their plants they have towers, and --

THE COURT: This is a generator plant?

THE WITNESS: Yes, right, and she is -- she is responsible for maintaining effective operation up there.

THE COURT: She watches the dials, she watches the meters, I mean, she will adjust dials?

THE WITNESS: That's right. And she has to signal if there is any problem.

THE COURT: Does she work alone?

THE WITNESS: It's pretty -- it's --

Q As best as you know.

A As best as I know, she is either alone or there are very few people. It's not a very populated area.

We have another man working in Queens in their stock department. I'm trying to picture specific individuals.

We have another man who is in their engineering department as a trainee.

I can't think of more specific --

THE COURT: Well, you have listed four plus several. Let's go on from Con Edison then.

THE WITNESS: Okay, people at Equitable, for example, and this is probably the highest level jobs, one of them there is a claims analyst, which means these are insurance claims that are filed with them, and he is in negotiations or speaks with the insuree, and makes recommendations for insurance claims.

Another person at Equitable is an underwriter.

Let's see, the man at Seagram is an expeditor, which is an ordinary expeditor.

THE COURT: All right.

THE WITNESS: There is one person who is a clerical supervisor at McGraw-Hill. I am trying to picture some of the other people. There is another man at Equitable who works on duplicating machines. Another person at McGraw-Hill is in a clerical capacity. At J.C. Penney one person is a junior draftsman.

I think the other people that I have not mentioned at Con Edison are doing outside work, basically general repair, general utility men working on crews.

THE COURT: You said there were several street crews?

THE WITNESS: I have several people in general crews and they are in the street crews.

THE COURT: I guess you have gone over every company?

THE WITNESS: Yes, I think so.

THE COURT: All right.

How long have they generally been working if the first one was hired in June?

THE WITNESS: The person employed for the longest period has been 15 months. The first one has been on the job for 15 months.

THE COURT: What is the average?

THE WITNESS: The average is 11 months. I don't know the average salaries. If you want the starting average --

THE COURT: Are there any negative aspects at all?

THE WITNESS: There were some initial problems with absences, some initial problems with latenesses, nothing to warrant dismissal. The feedback from the companies is that if it was a problem, people were warned, it was discussed. They might be put on probation, but it never -- in one case it resulted in a termination. In the others --

THE COURT: It was corrected?

THE WITNESS: It was corrected, but not to the point of firing, according to their procedure, their hiring and firing practices, but it is no worse than they would expect from anybody.

THE COURT: No worse than --

THE WITNESS: Than a non-addicted employee. In all cases after the initial fewmonths the person is treated as an employee and gets no special privileges and they are in no behaving any differently than they would expect from anyone else.

THE COURT: All right, cross-examine.

CROSS EXAMINATION

BY MR. DUNN:

Q Good morning, Miss Wolkstein. May I have the document that you were referring to just a moment ago, please?

A Yes.

MR. DUNN: Just bear with me a moment, your Honor.

THE COURT: Surely.

(Pause.)

THE WITNESS: Can I just see that? I reported from the first page. I don't know what was attached to it. I don't know what is on the second page. I mean, I only know the first page.

THE COURT: Look at the second page then.

THE WITNESS: All right. No, it was -- those were all.

THE COURT: Okay, you may continue with your cross-examination.

MR. DUNN: May I offer this for identification?

THE COURT: You don't have to have it marked. It was testified to.

MR. DUNN: This was set forth in much greater detail than in the testimony. It is more graphic.

MR. BALBER: It was used solely to refresh her recollection.

THE COURT: All right.

Q Miss Wolkstein, what type of additional controls imposed by the employer or are imposed by employers on patients from the program you represent that these employers take into their employ?

A In certain cases, and with the knowledge of the employee, there are urine monitorings that go on --that can go on in the medical offices in the company and this is part of the agreement at hiring and is subject to the approval of the patient. If that is going to go on, the person knows before they go there that this may be a fact and that there would be periodic urine monitorings.

Q What information do employers seek from you prior to employing a person that you are referring?

THE COURT: She has already given us that.

MR. DUNN: In general terms, she gave it, your Honor.

I would like to know if an employer were to ask what does of methadone is being administered to the patient, would you tell them?

A It has never been asked. It has never been asked. It has always been that they are maintained on

methadone. The dosage has never been asked for. I don't know that I would have a problem, but I would think that that would be also up to the medical director of the unit because he is the one that is prescribing the methadone.

Q If an employer were to ask whether a prospective employee had used illicit drugs during the past year, would you respond?

THE COURT: You said you would give the information you had about the past drug usage, drug abuse, right?

THE WITNESS: Yes.

MR. DUNN: I'm asking specifically, your Honor, about illicit drug use while a patient in the program, not the history narrated by the patient upon entering the program.

THE WITNESS: The people that we refer to of companies arepeople who have demonstrated their readiness to work; namely, drug abuse is not a problem. If theperson, perhaps, had some drug abuse early in treatmentand we have been involved with them and the situation has changed and is stabilized, that is not really the person we are presenting at this point.

THE COURT: I think the question now is simply suppose that you have someone under employ at a company

and then you find out through the urine specimen some day that he has taken some illicit drug. Would you be willing to voluntarily report that or would you be willing when asked or upon request -- the company calls up and says, "I wonder if you would answer a question. This man has been here the last six months. We were just wondering if you had any record of his using heroin.

Would you be willing to give information about heroin use, the results of the urine analysis occurring during the time of the employment?

THE WITNESS: In fact, at Con Edison we did make that information known and gave three-month reports, the result of our urine reporting. There was also in this case of the employment project one incident of drug abuse that became apparent in a screening urinalysis that was not done in the company. The medical director spoke to the employee, called me and I spoke to the doctor in charge of the clinic. The patientwas spoken to and it is no longer a problem. But there was an incident of drug abuse.

THE COURT: The information was given?

THE WITNESS: The information was given. We didn't lie. The doctor called and said, "Have you had evidence?"

We said, "Yes,we are aware of it. We are talking

to the man. Would you be willing to just give us time to see him?"

There was no trouble with the performance. He wasn't late. He wasn't interfering. It was a spot urine check that there was evidence of perhaps drug abuse and we worked along with the doctor and the patient and this was maybe four months ago and has not been a problem and it was all honest.

THE COURT: You do have the arrangement that you will make three-month reports to Con Edison?

THE WITNESS: Right. Con Edison has asked for that and we do it there.

THE COURT: From the urinanalysis?

THE WITNESS: Yes. Some of the companies do their own screening periodically. They may do it more frequently in the beginning and once the person is in their employ they may stop or may do it once a year.

Q Would you also undertake to tell the employer immediately upon a patient missing an appointment?

A I think we would share things when they are relevant to employment. I think people have a certain amount -- if it interferes with their employment, then that is a problem. If a person has missed medication one day, that is not necessarily relevant to employment.

Q Your answer to the question would be yes or no.

A It would really depend upon what this reflected in terms of the person's employment.

Q Let me ask the question once again: if an employer were to request of you that you notify the employer immediately upon his employee missing an appointment to pick up medication, would you comply with that request, assuming your patient agrees?

A I think I would discuss that further with the employer only because I think that that is -- I don't know how warranted it is and I think I would want to see why that detailed information of a person's daily actions, occurrances that were going on were needed and what bearing it has on their employment.

Our goal is to have a person be able to function and not have more pressures than the average employee has on him.

THE COURT: If you could be persuaded by a given employer that it was necessary for them because of the peculiarities of their operation to know if necessary medication were missed, you would listen to that request?

THE WITNESS: Yes.

THE COURT: You would consider it?

THE WITNESS: And I would discuss it with the

person.

THE COURT: You are not turning it down here now?

THE WITNESS: I don't turn anything down. I would want to know why they want the information, of what value is it, is it going to be punitive to the person, are we making more demands on the people than we would of other individuals?

THE COURT: And making more demands on your service?

THE WITNESS: Yes.

Q Would you agree to notify the employer immediately upon the person being terminated by your program?

A Yes, we have done that and in cases people have not been terminated from the job. It was leaving our program, which is not necessarily --

THE COURT: But that is the answer, you would notify of termination?

THE WITNESS: Yes.

Q Did you co-author and submit a paper to the Fifth Methadone Conference?

A Yes, I did.

Q Was the paper entitled "Work: What Difference Does It Make"?

A Yes.

Q And do you recall having written:

"However, many patients have overcome these obstacles and worked. Yet they continue to express dissatisfaction with their lifestyles. This is indicated by the fact that some patients continue to use drugs and get arrested. In addition, many have difficulty forming meaningful relationships with co-workers and others not using drugs."

Did you write that?

A Yes. Do you want me to comment on that?

Q If you care to.

A Yes. I think these reflect realistic problems that we are in touch with and dealing with. There are many different categories of patients and many different relationships that we maintain. I don't know that it is -- there are different categories of patients and different levels of rehabilitation and different people that we would refer to different jobs. Somebody who has had arrests having drug abuse we would not refer to a company where we have agreed upon other criteria. These would be people that perhaps are then brought to our attention because they are having the problems and they are experiencing dissatisfaction, and we are called upon to provide assistance to them to

overcome that. That is part of our clinical responsibility, to try to help people overcome these problems, people who we would refer to companies, who we would probably screen, and we would consider job ready. It would not be people who were having these difficulties. They would be people who have demonstrated the ability to work, who got along, who were not abusing drugs, who were not being arrested. There are different groups of people and they can't -- everybody doesn't qualify for every job, and we are very selective about the people that go to different job categories, depending upon the nature of the job, the responsibility and what our agreements are.

Q Of this sampling of 26 people you were discussing earlier, I think you referred to six firms?

A Seven.

Q Can you summarize for me the reports that you presently have available with respect to disciplinary actions that were imposed on these patients? For that purpose, would you refresh your recollection with the same document that you have referred to earlier?

A Yes, there were in the course of employment six people who had disciplinary actions taken against them, absence in two cases and lateness in four cases, and these in one case was put on probation, you know, advised

that it was a problem.

As I said before, it did not lead to termination and the problem has been resolved. Again, these are in the course of the 15 months that the people have been employed. That is the longest person. But it involved six people out of twenty-six.

Q Would you for me from that document the portion entitled"Medical Complications"?

A There were five cases of vomiting and nausea, some respiratory infection, the drug abuse that I mentioned. Somebody had hepatitis and there was an ear, a tympano mastoiditis.

THE COURT: Five cases of vomiting and nausea?

THE WITNESS: Yes.

THE COURT: One hepatitis?

THE WITNESS: Yes.

THE COURT: One drug abuse?

THE WITNESS: Right, and one chronic tympano mastoiditis. That person, by the way, happened to be the person who was also let go, but not because of the medical problem. He developed an ear problem, nothing to do with this.

MR. DUNN: Thank you.

MR. BALBER: Can I ask one question on redirect,

your Honor?

REDIRECT EXAMINATION

BY MR. BALBER:

Q Was there any indication from the employers involved in the studies that these medical complications interfered with work performance?

A No.

Q Was there any indication from the employers involved in the study that the medical complications you just enumerated interfered with work performance?

A No.

THE COURT: Are you saying that hepatitis wouldn't interfere with work performance?

MR. BALBER: I'm not qualified to give testimony, but there are all different degrees of hepatitis. Some are relatively benign and inconsequential and might not even need treatment by a physician.

THE COURT: Hepatitis I thought was a matter of staying home, staying out of work?

THE WITNESS: No, there are different degrees.

THE COURT: Is there anything to describe what happened to this fellow who had hepatitis?

THE WITNESS: You mean how many days he was out of work?

THE COURT: Yes.

THE WITNESS: I can find that out, but I know that there was nothing excessive.

THE COURT: It wasn't one of the more serious cases?

THE WITNESS: Absolutely not.

THE COURT: Not affecting him long term?

THE WITNESS: No, a low-grade infection.

THE COURT: There are cases where somebody has to be out for a long time.

THE WITNESS: Yes, months. I can find out, but I know it was not one of the two-month cases.

THE COURT: All right.

(Witness excused.)

IRVING F. LUKOFF: SUMMARY OF PROFESSIONAL ACTIVITIES

Date of birth: May 21, 1921

EDUCATION:

Pennsylvania State University	B.A. - December 1942	
Columbia University	Ph.D - 1967 (Sociology and Social Psychology)	

TEACHING EXPERIENCE:

Syracuse University	Instructor (Sociology)	1950-52
Hunter College	Lecturer (Sociology)	1955-57
Columbia University School of Social Work	Lecturer (Research Methods)	1958-60
University of Pittsburgh	Associate Professor (Research and Social Science)	1961-66
Columbia University School of Social Work	Associate Professor-Professor	1966-present

RESEARCH POSITIONS:

Bureau of Applied Social Research (Columbia)	Research Assistant and Associate	June 1947-June 1950
Jewish Family Service Research Department New York City	Associate Director	October 1953-June 1955
Columbia University School of Social Work Research & Demonstration Center	Research Scientist and Project Director	October 1955-1960
University of Pittsburgh	Project Director	1961-66
Columbia University School of Social Work Research & Demonstration Center	Director, Addiction Research & Treatment Corporation Evaluation Team	1969-present

PUBLICATIONS AND REPORTS:

Irving F. Lukoff and Judith Brook,"Ethnic Groups, Socialization and the Epidemiology of Drug Use," November 1973.

Irving F. Lukoff and James Vorenberg, "Addiction,Crime and the Criminal Justice System," delivered at the Fifth National Conference on Methadone Treatment, Washington, D.C., March 18-19, 1973. (To be published in Federal Probation, December 1973 issue.

Irving F. Lukoff and ARTC staff, "Dosage Levels of Methadone, Centralized and Decentralized Facilitie and Outcomes: A Report on an Experiment," November 1973.

Irving F. Lukoff, Debra Quatrone and Gila Hayim, Heroin Use and Crime in a Methadone Maintenance Program, United States Department of Justice, Law Enforcement Assistance Administration, National Institute of Mental Health, February 1973.

Irving F. Lukoff, "Issues in the Evaluation of Heroin Treatment," delivered at the Epidemiology of Drug Abuse Conference, Puerto Rico, February 12-14, 1973. (To be published in 1973 in a volume edited by Eleanor Carroll, National Institute of Mental Health and Eric Josephson, Columbia University School of Public Health.)

Irving F. Lukoff, "Employment Problems of the Rehabilitated Drug Addict," Presented at the Hearings of the Commission on Human Rights, January 9, 1973.

Irving F. Lukoff, "The Vicious Circle: Drug Use, Illicit Activities and Victimization," paper read at the American Sociological Association Annual Conference, New Orleans, August 28, 1972.

Irving F. Lukoff, Debra Quatrone and Alice Sardell, Some Aspects of the Epidemiology of Heroin Use in a Ghetto Community: a Preliminary Report," United States Department of Justice, Law Enforcement Assistance Administration, National Institute of Mental Health, July 1972.

Irving F. Lukoff and James Vorenberg," Methadone Maintenance Evaluation Studies: Some Unresolved Issues on Crime and Drug Abuse," presented at the Fourth National Conference on Methadone Treatment, San Francisco, January 8, 1972.

Irving F. Lukoff, The Social Sources of Adjustment to Blindness, American Foundation for the Blind, 1970.

Irving F. Lukoff and Martin Whiteman, "Socialization and Segregated Education," Research Bulletin #20, American Foundation for the Blind, pp. 57-108.

Irving F. Lukoff and Martin Whiteman, "A Factoral Study of Sighted People's Attitudes Toward Blindness," Journal of Social Psychology, Vol. 44 (December 1964), pp. 339-353.

Irving F. Lukoff and Victor Freeman, Final Report, Family Study Project, PHS Grant #5-R-11MH 542, National Institute of Mental Health (1964). See Chapters V, VI and Appendices V, VI and VII.

Irving F. Lukoff and Martin Whiteman, Attitudes and Blindness: Components, Correlates and Effects (November 1963), 158 pp. and Appendices.

Martin Whiteman, Irving F. Lukoff and Eunice Kelly, "Blind People's Evaluation of Sighted." Read at American Psychological Association meeting, 1963.

Irving F. Lukoff and Martin Whiteman, "The Adjustment of Blind Persons." Report for Vocational Rehabilitation Administration, 1962.

Irving F. Lukoff and S. Mencher, "A Critique of the Conceptual Foundation of Community Research Associations," The Social Service Review, Vol. XXXVI, No. 4 (December 1962), pp. 433-443.

Martin Whiteman and Irving F. Lukoff, "Attitudes Toward Blindness in Two College Groups," Journal of Social Psychology, Vol. 63 (June 1964), pp. 179-191.

Irving F. Lukoff and Martin Whiteman, "Intervening Variables and Adjustment: An Empirical Demonstration," Journal of Social Work, Vol. VII, No. 4 (October 1962), pp. 92-102.

Martin Whiteman and Irving F. Lukoff, "Public Attitudes Toward Blindness," Proceedings of the Mobility Research Conference at Massachusetts Institute of Technology, pp. 76-82. Also, the New Outlook for the Blind, Vol. 56, No. 5 (May 1962).

Irving F. Lukoff and Martin Whiteman, "Primary Group Attitudes and the Adjustment of Blind Persons," Proceedings of the Mobility Research Conference at Massachusetts Institute of Technology, pp. 83-99.

Martin Whiteman and Irving F. Lukoff, "An Experiment in Changing Sighted People's Attitudes Toward Blindness," paper read at Eastern Psychological Association meeting, April 1962.

Irving F. Lukoff and Oscar Cohen, Attitudes Toward Blind Persons, American Foundation for the Blind, 1972.

Irving F. Lukoff and Martin Whiteman, "Attitudes Toward Blindness: Some Preliminary Findings," New Outlook for the Blind, Vol. 55, No. 2 (December 1961).

Samuel Finestone, Irving F. Lukoff and Martin Whiteman, The Demand for Dog Guides and the Travel Adjustment of Blind Persons, Research Center, Columbia University School of Social Work (1960), 131 pp.

Irving F. Lukoff, "The Sociology of Blindness" in S. Finestone (editor) Social Casework and Blindness, American Foundation for the Blind (1960).

Irving F. Lukoff, "A Research Framework for Family Analysis in a Group Treatment Setting," a theoretical and research framework for Family Study Project (NIH Grant #5-11-M #542).

Irving F. Lukoff, J. Goldstein and H. Strauss, An Analysis of Autobiographical Accounts of Concentration Camp Experience of Hungarian Jewish Survivers, IV, (1950), 170 pp.

E. Herzog, Irving F. Lukoff, and J. Lieb, A Study of the Return Interview, New York: Jewish Family Service (1956), 337 pp.

J. Goldstein, Irving F. Lukoff and H. Strauss, "A Case History of a Concentration Camp Surviver," American OSE Review, (Fall 1951), Vol. 8, No. 1, pp. 11-28.

Irving F. Lukoff, V. Freeman et al., "'Family Group Counseling' as Differentiated from Other 'Family Therapies,'" International Journal of Group Psychotherapy, Vol. XIII, #2 (April 1963), pp. 167-175.

Martin Whiteman and Irving F. Lukoff, "Attitudes Toward Blindness and Other Physical Handicaps," The Journal of Social Psychology (1965) No. 66, pp. 135-145.

Irving F. Lukoff, "An Analysis of the 1955 Workshops in Human Relations conducted with the cooperation of the National Council of Chritians and Jews" (mimeographed 1956).

CONSULTANTSHIPS: (selected)

United Nations (Social Affairs)	1950-51
New York State Mental Hygiene Commission	1951-52
Graduate School of Education (New York University)	1955-56
National Conference of Christians and Jews	1955-56
Ad Hoc Committee on Sensory Aids, Massachusetts Institute of Technology	1962-64
Family Study Project, Allegheny Hospital, Pittsburgh	1962-65
Family Diagnostic Study, University of Toronto	1963-66
Health and Welfare Association of Allegheny County Area Youth Program	1964-65
Pilot Study of Correctional Training and Manpower	1967
Scientific Advisory Committee for Sensory Aids Evaluation and Development, Massachusetts Institute of Technology	1964-present
Bird S. Coler Social Service Department	1967-present
Social Work Recruiting Council	1967
Public Health Services, Health Services Ad Hoc Advisory Committee	1970-71
Ad Hoc Committee on Blindness - Member of the Planning Committee for Research Groups at Massachusetts Institute of Technology, Harvard and Tufts. Object: An NSF supported program for technological research.	1962-64
National Council on Research in Blindness	1967
Wilmington TASC Project	1972-73
Cleveland TASC Project	1972-73
Institute for Research in Social Behavior, Berkeley, California	1973

Social Consult, Inc.	1972-73
Special Action Office for Drug Abuse and Prevention, The White House (part of a special task force, and separate from previous consultantships to SAODAP Evaluation staff).	1973
Technical Advisory Committee, Human Resources Administration, New York City	1973
Mayoral Office for the Handicapped, New York City	1973
Office of Programs and Policies, New York City Police Department	1972-73

Lectures:

Student Honor Society, Arthur Lehman College, "On Ideology and Social Research	December 1973
Sociology Majors, Hunter College, "On Program Evaluation "	March 6, 1973
School of Public Health, Columbia University, "The Epidemiology of Heroin Abuse"	April 25, 1973
Invitation to talk to a group from the Department of Justice, National Institute of Mental Health and SAODAP to discuss research needs in the field of drug addiction and to describe the research program at ARTC.	February 21, 1973
Participant, Human Rights Commission, hearings on employment problems of the rehabilitated addict.	January 9, 1973

PROFESSIONAL ORGANIZATIONS:

American Sociological Association Society for the Study of Social Problems Committee on Social Science in Health American Association of University Professors Eastern Sociological Association	1947-present
National Conference on Social Welfare - Planning Committee for Annual Meetings (Section IV)	1962-65
Chairman - Panel on the Use of Judgements in Social Work Research, National Council on Social Welfare	1963
Chairman - Panel on Desegregation, National Council on Social Welfare	1964
Member - Planning Committee of the American Foundation for the Blind, Inc.	1964
Chairman - Panel on Research Centers and Graduate Training in Sociology, American Sociological Association	1968
Chairman - Subcommittee on Evaluation of Mobility Devices Committee for Sensory Aids Evaluation and Development, Massachusetts Institute of Technology	1966-68

CONFERENCES:

Socialization of the Young Blind, Yale Club, New York, N.Y.	January 18-19, 1973
The Epidemiology of Drug Abuse, San Juan, Puerto Rico	February 12-14, 1973
Fifth National Conference on Methadone Treatment, Washington, D.C.	March 17-19, 1973
Addiction and Vocational Rehabilitation, NIMH, San Francisco	March 28-30, 1973

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CARL A. BEAZER, et al.,
Plaintiffs,
vs. 72 Civ. 5307
NEW YORK CITY TRANSIT AUTHORITY,
Defendants.

New York, October 25, 1974;
9.30 A.M.

Trial resumed.

* * *

* * *

THE COURT: Next witness.

MR. BALBER: The next witness, your Honor, is Dr. Irving Lukoff.

I R V I N G F. L U K O F F, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BALBER:

MR. BALBER: I have a curriculum vitae pertaining to Professor Lukoff.

(Plaintiffs' Exhibit 41 marked for identification.)

THE COURT: Do these reflect your background and credentials, referring to Exhibit 41?

THE WITNESS: Yes, sir.

THE COURT: I will receive them both.

(Plaintiffs' Exhibit 41 received in evidence.)

MR. BALBER: I would indicate that Dr. Lukoff's professional publications pertain to drug abuse.

THE COURT: I see that.

Q Dr. Lukoff, your curriculum vitae indicates that you are Project Director on a project called Addiction Research and Treatment Corporation. Do you hold any other research positions pertaining to drug abuse that aren't listed?

A I am director of the Socio-Cultural Studies of Drug Abuse at Columbia University.

Q Doctor, when was the addiction treatment corporation established?

A In 1968.

Q Have you been associated with it since that time?

A Soon after it began. I studied with them, actually, in January of 1970.

Q What is your function as project director pertaining to that corporation?

A To direct all research activities related to the problems of the patients' behavior, comportment to program requirements, to do studies of success and failure in the treatment program, to work together with Harvard on the studies of the relationship between heroin use and crime, as well as to do community studies on the causes of drug addiction.

Q Are you generally familiar with the professional literature published in the drug abuse field?

A I try to keep up with it. It is kind of a desperate job, but I try.

Q Doctor, among the spectrum of experts who have studied the field of methadone maintenance, how would you classify yourself in terms of professional support for that treatment?

MR. DUNN: I object to that.

THE COURT: Sustained.

Q Are you familiar with an article that appeared in a publication called Public Interest a few months ago? The article was written by a man by the name of Epstein and it was entitled "Methadone, the Forlorn Hope."

A Yes, I am familiarwith the article.

Q Did you cooperate with the author in its preparation?

A Yes, I did.

Q Did your research provide the basic data that that article relied upon?

A Some of the data he relied upon. He also used other data.

THE COURT: Who was the author of that?

THE WITNESS: Edward J. Epstein.

MR. DUNN: Your Honor, I believe that is Leon J. Epstein.

THE WITNESS: I might be mistaken.

THE COURT: You have that title and you say it is Leon J. Epstein?

MR. DUNN: Leon J. Epstein and Mitchell S. Rosenthal.

Q Did your article accurately reflect your views --

MR.DUNN: Your Honor, we have the wrong article.

THE COURT: You've got the wrong article? Let's get it right. You are talking about Edward J. Epstein?

THE WITNESS: I think it was that. I called him Ed. I saw the summer issue of Public Interest and it is called Methadone, a Forlorn Hope.

THE COURT: What did you do on the article? You say youprovided some of the data?

THE WITNESS: I gave him some of the things I have written. I met with him on two occasions and discussed the field of methadone with him and suggested other readings to him, and so forth.

Q Did the article accurately reflect your views regarding methadone maintenance treatment?

A Yes, it does.

Q Doctor, has the Transit Authority asked you to testify in its behalf in this lawsuit?

A Yes, they have.

Q Did you accept?

A No, I refused.

Q What were your reasons for not accepting?

MR. DUNN: I object, your Honor.

THE COURT: Sustained.

MR. DUNN: The authority did not ask this witness to testify.

THE COURT: Did they or did they not?

THE WITNESS: Someone called me up and asked me if I would testify for the Transit Authority.

MR. SUMMERS: I spoke with you and I did not invite you to testify. I asked if I could talk to you to

find out what you knew about the problem, and then we might or might not accept it. That is a different story.

THE COURT: Let's not get into that.

Q In your opinion, Doctor, does your data relied on in the Public Interest article justify a blanket ban on the employment of persons in methadone maintenance programs from job positions requiring a high degree of employee reliability?

MR. DUNN: I object to the question, your Honor.

THE COURT: Sustained.

Q Dr. Lukoff, with what degree of certainty can participants in methandone maintenance treatment programs be screened for job reliability?

MR. DUNN: Objection.

THE COURT: I think it is so general, and we have had specific points on this matter. These broad questions aren't going to help me.

MR. BALBER: I will break it down.

THE COURT: You may break it down.

Q Is it possible to screen people in methadone maintenance programs and predict their future job reliability? Just yes or no.

A Yes.

Q On such factors could such screening be based?

A In every program they have much more information than most personnel people have in the ordinary course of their selection of people. They know whether they have been abusing the drugs in the program. They know their criminal histories. They have had contact with them on a weekly, sometimes daily basis for many months, and they have a great deal of information to understand the individual.

I think the point that has to be made is that all addicts are simply not alike. They are very variable people. People have the mistaken idea that all addicts are alike. Many of them are very close to their family, their spouse and their children. These are very good risks. The majority of them have a certain history of being stable which shows they can perform jobs and hold jobs for extended periods of time. Many of them have had such jobs even while addicts. Their criminal records are very variable.

The program, ARTC, recruits criminal records and 15 to 18 per cent have no criminal records at all.

MR. DUNN: I move to strike the witness's answer as unresponsive to the question. The question elicited the factors.

THE COURT: I think it is responsive.

A Most of the others have criminal records directly related to the use of drugs, loitering, possession of works and things of that sort. This is known to the people in the programs. Very few of them are the real, hard core criminals we usually think about. There are those, but they are certainly a minority of those in treatment.

Q How good is the screening; I mean, just how well does it work, if an employer wants a man he can rely on with absolute certainty?

A You can't do it in the ordinary course of prediction in employment.

THE COURT: I have enough sense to realize that nobody is prophetic. I think we have had a great deal of this before. We talked about screening.

Q Is ARTC capable and willing to do such screening?

A They are, and every program has a job development, vocational counsellor who would be delighted to work in the program with Addiction Research and Treatment Corporation. It is a large program which has facilities both in the Bedford Stuyvessant area, the Fort Green area, and the Harlem area for methadone treatment.

THE COURT: Is it the same type of program

of methadone treatment as Beth Israel?

THE WITNESS: Some variables from Beth Israel. Patients are in lower doses.

THE COURT: You do conduct methadone treatment?

THE WITNESS: Yes, there are some drug patients on the program, too.

THE COURT: How many patients do you have now?

THE WITNESS: The active patients right now are around 1300.

THE COURT: What areas do you cover generally?

THE WITNESS: In terms of research?

THE COURT: Geographically.

THE WITNESS: Bedford Stuyvessant, the Fort Green area of Brooklyn and several facilities scattered through Harlem.

THE COURT: And you have counselling and vocational guidance?

THE WITNESS: Yes.

THE COURT: And positions?

THE WITNESS: Positions.

THE COURT: How many facilities do you have?

THE WITNESS: Right now there are 11 facilities. One is more or less being phased out. There are 10 active facilities now.

THE COURT: And you work on a lower dosage than Beth Israel?

THE WITNESS: For the most part. There are patients on doses equivalent to those that Beth Israel, but they are a minority of the patients.

THE COURT: Why do you do that?

THE WITNESS: There is some evidence in the literature that patients can be maintained on lower doses and do about as well, and this has been studied by Dr. Jaffe in Chicago and Dr. Goldstein in California, and on the basis of that experience it was decided not to routinely build patients up to high doses.

THE COURT: Why does it make any difference?

THE WITNESS: First of all, although our experience with methadone is not that long, the long-term effects are simply still an unknown element. It is still a powerful drug and the less you can give and get away with the better off you are.

Secondly, it seems it would be easier to detoxify the patient ultimately from a lower dose if he is maintained on a lower dose than a high dose. One of the goals of ARTC is to eventually detoxify patients instead of assuming a life-long maintenance. These are part of the controversy within the field, as you might

gather.

THE COURT: Okay.

Q Dr. Lukoff, just one more question: based on your research and the research of others, with whom and with whom you are familiar, what is the racial composition -- you are a sociologist, I see -- of the population of active heroin users?

A The way we know about it is those who come for treatment or come to the attention of law-enforcement officials, and some community surveys, and the bulk of heroin addiction is concentrated in our major ethnic groups, black, Puerto Rican, and Chicano. They would constitute, perhaps, four-fifths of the heroin addicts in the country.

MR. BALBER: Thank you, Doctor.

Cross-examine.

CROSS EXAMINATION

BY MR. DUNN:

Q Good morning, Dr. Lukoff, I just have one or two questions, or probably a few more than that.

Did you author a paper together with James Vorenberg entitled Methadone Maintenance Evaluation Studies: Some Unresolved Issues On Crime and Drug Abuse?

A Yes, I did.

THE COURT: When was that?

MR. DUNN: That was presented, I believe, your Honor, to the Fourth National Methadone Conference, 1972.

THE COURT: What was the title?

MR. DUNN: Methadone Maintenance Evaluation Studies: Some Unresolved Issues On Crime and Drug Abuse, by Irving F. Lukoff and James Vorenberg.

Q You referred, Doctor, in your testimony this morning on direct examination to the works of Drs. Jaffe, Chambers and Taylor. You also made reference in this article to the works of the same three doctors. You say:

"Yet the data from other reports not by Jaffe, Chambers and Taylor and others all indicate that heroin use continues for many patients whether they are so-called blockage or low doses within the methadone program."

A Yes.

THE COURT: Where is he saying this? I didn't even hear him refer to these people.

A I was referring specifically to the two studies, one by Dr. Jaffe and colleagues,which only studied retention in the program, high and low dose, and the other was a study by Dr. Goldstein in California which was only concerned with people given 50 or 100 milligrams. It didn't make any difference. That was all he was concerned with.

THE COURT: I missed that.

MR. DUNN: The witness at least referred to Dr. Jaffe in this article which states that --

THE WITNESS: Dr. Jaffe was the former head --

THE COURT: Did you refer to Dr. Jaffe in your direct testimony?

THE WITNESS: I mentioned the fact that he had done some research in Chicago. You asked me some questions about low and high dosage and I indicated he indicated that you could do just about as well by giving lower doses of methadone and because of his research and Goldstein's, ARTC's policy now was, in response to that question, that they tend to give lower doses.

I might add parenthetically that I will be coming out with a paper which will say the same thing, that as a result of experiment high and low doses do not make much difference.

Q In your report written with Dr. Vorenberg, entitled Methadone Maintenance Evaluation Studies: Some Unresolved Issues On Crime and Drug Abuse, you say:

"The data from other reports, not by Jaffe, Chambers and Taylor and others, all indicate that heroin use continues for many patients whether they are so-called blockage or low doses within the

methadone program."

A The point being made there, sir, is that in terms of whether there is such a thing as blockage when you give 90 or 100 milligrams. What I was referring to was the fact that research indicated that there is about the same percentage of dirty urine whether given 50 or 100 milligrams. That was the issue under discussion there. I have data in several reports the bibliography of which shows that there is drug use of those who stay in treatment. These are the ones you are talking about in terms of employment. It is fairly high the first few months, but it drops down to where it is a minority of the patients who will continue to abuse heroin.

THE COURT: Heroin use is fairly high in the first few months; right?

THE WITNESS: Yes, in the data I have examined.

THE COURT: Just a general rule?

THE WITNESS: By 12 months it drops down to be a relatively -- it is only true for a small portion of the patients.

THE COURT: The thing you are talking about is what I want to get. You say during the first year there is a fairly high urine use?

THE WITNESS: If you plot it my month, sir, you

get a sharp declining curve of dirty urine.

THE COURT: Let's plot it by months. Here is a piece of paper.

THE WITNESS: I wish I had the data with me to be more precise. I'm working from memory now. You'll get something like this, where about 30 or 40 per cent of the urines will be dirty the first couple of months in this particular program, and then they will drop down to 70 or 80 per cent of the urines being dirty. That is mainly the function of a few patients who continue to abuse drugs.

THE COURT: Put in the months.

THE WITNESS: These are the 12 months here (indicating). It looks approximately like that.

THE COURT: What are the percentages.

THE WITNESS: They run about 40 per cent of the urines being dirty the first couple of months of the program. Then they drop down sharply after that. It must be understood that anything at the end is contributed by a small segment of the population of patients. Whether you get that or not depends on the program's policy: do you pick out people of dirty urine or do you try to work with them. Different programs have different philosophies with respect to that.

THE COURT: This is regardless of dosage; right?

THE WITNESS: Yes. You don't get much of a significant difference amongst most patients. You might amongst general patients. There is a slight difference in terms of dosage and dirty urines, but not amongst all the patients and the average for the whole program is not significant.

MR. DUNN: May we have that marked as an exhibit, your Honor?

THE COURT: I think it is a little rough. Probably it doesn't do justice.

THE WITNESS: I don't have the data in front of me.

THE COURT: I think it is basically in the record, really.

MR. DUNN: All right, I will withdraw the request.

Lukoff-cross

Q Can you tell me, Doctor, are there advantages and disadvantages associated with the two types of methadone treatment that you have identified, the high dose and the low dose treatments?

MR. BALBER: I object insofar as that requires medical testimony from the witness who is a sociologist.

THE COURT: I will sustain that objection.

I think he has told us because of the long term effects being unknown, and the fact that you want to put somebody in the position where they can get completely off drugs as soon as possible -- I think he's told us.

A The cummulative --

THE COURT: We are just trying to save time. Do you have anything else?

MR. DUNN: Yes.

Q The same paper to which you referred earlier, Doctor, you state:

"The variations in the results suggest that methadone does work well for many patients but that for a large segment of those accepted for treatment, it does not appear to produce the desired results. At least as far as continued drug use is concerned. We must have more detailed information before we can draw conclusions on the utility of methadone treatment."

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A That statement was made in 1972, actually, 1971. I would qualify that now consider only because --

THE COURT: What do you say now?

THE WITNESS: I would qualify it to the point where I say that there is within the population a hard-core group who are very difficult for programs to work with, these represent a minority, and that programs know who they are, and they can be readily identified by the program personnel, and it is not a difficult task to identify them and that the bulk of the addicts are people who are struggling to rehabilitate themselves but the programs simply cannot do it by themselves. They have to have employment, if the rehabilitation process is to be completed.

Q Are you familiar with the works of Dr. Frances Gearing?

A Yes, sir.

Q Are you familiar specifically with the studies she did of methadone programs?

A A series of reports that she turned out since 1969 I think I have seen every one of them.

Q And in your professional judgment, are they accurate reports?

A That would require more careful comment. I think they are accurate in that the counts are accurate and that

melt 3 Lukoff-cross

numbers are accurate. I think there are problems connected with the way she handled the data which probably exaggerates success to some extent.

It's dealt with in the Epstein papers that was referred to before in some detail. It exaggerates, perhaps, the success because you're dealing only with survivors in the program and the survivors in the program are generally your better patients, the people who drop out of the program in other words, there is always a self-cleansing in any rehabilitation program where those are more interested in rehabilitation are the ones that stay with your program.

These are the ones you're referring to when you're talking about employment. They attempt to get better. If you want to understand the full impact of the treatment on the addict population, that's another question all together, and requires a different kind of answer.

MR. DUNN: Thank you very much, Doctor.

THE COURT: You're excused.

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* * *

MALCOLM KENNETH FRAZIER,

CALLED as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DALTON:

Q First, I'd like to thank you for coming in on such short notice.

How old are you, Mr. Frazier?

A Thirty.

Q Where were you raised?

A I was raised in East Harlem.

Q Can you tell us your educational background?

A Completed tenth grade in high school.

Q Tenth grade?

A Yes.

MR. DUNN: Can't hear the witness, your Honor.

THE COURT: You will have to lean forward, speak just as loudly and slowly as you can.

A I completed the tenth grade, high school.

Q Are you married?

A Yes.

Q Do you live with your wife?

A Yes, I do.

Q Do you have children?

A Two

Q Mr. Frazier, when did you first become involved in drugs?

A In 1969.

Q And what drugs did you become involved with?

A Heroin.

Q How bad was your habit, your heroin habit at its peak?

A At its peak, about $18 a day.

Q Would you repeat it?

A $18 a day.

Q At its peak. Did you use heroin on a daily basis from 1969 until you ceased to do so?

A Not in the beginning, in 1969, it was just, you --

Q At any point did you use heroin on a daily basis?

A From about 1970.

Q Now, Mr. Frazier, it has been stipulated, that means that counsel for the various parties have agreed, that in October of 1972, you entered a methadone maintenance treatment program.

Between 1969 and that date, October of '72, did you attempt to discontinue the use of heroin?

A I tried several times on my own.

Q Would you speak a little more slowly and a little more loudly, please?

A I tried several times on my own.

Q Were you successful?

A No, I wasn't.

Q Did you ever try not on your own as part of a formal program?

A Yes. I was admitted to Metropolitan Hospital in June of 1972.

Q And what kind of program was that?

A It was a 20-day detoxification program.

Q And didyou stay in Metropolitan Hospital for the full duration of that?

A I stayed in for about three days.

Q And when leaving the program, did you return to the use of heroin?

A Several times.

Q Now, was there any other occasion on which you attempted to enter a formal program prior to the methadone maintenance treatment program?

A Seven-day detoxification program.

Q Where was that?

A I don't remember the name of the hospital, it was on 102nd Street and Madison Avenue.

Q And when you left that program, that seven-day detoxification program, did you return to the use of heroin?

A Yes, about once or twice --

MR. DUNN: Your Honor, we are having difficulty hearing both counsel and the witness.

THE COURT: Okay, both of you, everybody in the back of the room has to hear you. Why don't you sit forward and speak very loudly. You too.

Q I'd like to now direct your attention to the methadone maintenance treatment program you entered in October of 1972.

How long were you in that program?

A I was in five months.

Q And what happened at the end of that five months?

A I was detoxified.

Q When you say you were detoxified, do you mean that

you were detoxified in that fifth month or at precisely what point did you begin detoxification?

A I believe about the second month I asked them to detoxify me.

Q So you detoxified over the period of say December to March, 1973?

A Yes.

Q During your participation in that -- by the way, what's the name of --

THE COURT: You were drug-free then in March of 1973?

THE WITNESS: Yes, sir.

Q Have you been drug-free since?

A Yes.

Q Have you used drugs at any time since March of 1973?

A No, I haven't.

Q During the time that you were part of that program from October of '72 to March of 1973, did you use drugs?

A No.

Q Other than methadone.

A No.

Q What, by the way, is the name of the program?

A It didn't really have a name, but it was run by a

melt 12 Frazier-direct

Dr. Salizar.

MR. DALTON: I think the stipulation covers that.

MR. DUNN: We are still having difficulty hearing counsel.

THE COURT: It isn't stipulated. The City didn't agree. I guess they did, yes, I'm sorry.

MR. DALTON: It's unclear. The program, your Honor, for your information, was the Mary Scranton Foundation

THE COURT: That's stipulated. Go ahead.

Q Now, it is also stipulated, Mr. Frazier, that you applied for Transit Authority employment on three occasions The first occasion in 1971 for the position of bus operator?

A Right.

Q Do you know why you were rejected for employment in 1971?

A Well, they sent me a letter, they told me that I lied on my application.

Q Lied on your application in what respect, Mr. Frazier?

A One of the requirements was that you have a drivers license for a period of two years.

Q Speak a little more slowly.

A One of the requirements was that you have a driver's license for two years. They claimed that I didn't have a

driver's license for two years.

Q Isn't it a fact that they claim that your driver's license was suspended?

A Well, it was suspended.

Q Now, at the time that you filled out your application form in 1971 for the position as operator, bus operator, did you indicate that your license was suspended?

A That was 1970.

Q Did you indicate that your license was suspended?

A No, because I didn't know at the time that it was suspended.

THE COURT: I'm just not clear on this.

Q You say you filled out the form in 1970. Is that because you filled out the form --

THE COURT: Can't we concede about the reasons?

MR. DUNN: That has been stipulated to your Honor.

MR. MORRILL: It hasn't been stipulated.

THE COURT: What was the reason for refusing him the first time, was it solely related --

MR. DUNN: He falsified his application for employment?

THE COURT: What was the falsification?

MR. SUMMERS: He wanted to be a bus driver and his license was suspended and he didn't tell us that.

THE COURT: You applied for a position as a bus operator, right?

THE WITNESS: Right.

THE COURT: That was in early 1971, right?

THE WITNESS: 1970.

MR. DALTON: Your Honor, it overlapped, he initially took the test in 1970, he was processed in 1971.

THE WITNESS: I took the test in 1969, was processed in January of 1970.

THE COURT: Well, the stipulation says in February, 1971 you sought employment as a bus operator, having passed the written examination some time before, right?

THE WITNESS: Was it in '71? I think it was in 1970.

THE COURT: Now, that's not too important.

Now, at that time did you fill out an application? Did they ask you about whether you had a driver's license?

THE WITNESS: Right.

THE COURT: And what did you say?

THE WITNESS: I showed them the driver's license, you know, they take the papers, I showed it to them, the driver's license and whatnot, and went through the normal procedure of filling out all the forms and was, you know, went home and about a month or two later they sent me a letter

saying I falsified my application because I didn't have a driver's license.

THE COURT: Did you or didn't you have a driver's license?

THE WITNESS: I had. I had gotten a ticket, moving violation and they had started this new program where if you are delinquent in paying the fine, that they suspend your license and until you do pay a fine, and that's what happened.

THE COURT: But did that show on your license?

THE WITNESS: I don't understand.

THE COURT: You say you showed them, you showed the Transit Authority the license?

THE WITNESS: Right.

THE COURT: And did the moving violation show on the license?

THE WITNESS: No, it didn't show because I hadn't paid the fine yet.

THE COURT: What do you do, when you pay the fine, you send the license in and then they --

THE WITNESS: You take it down to the court and you pay your fine, you know, and they put a stamp on the back, and tell you if there is a suspension.

THE COURT: Oh, so at the time you showed the licens

it had been suspended, right?

THE WITNESS: I don't know whether it had been suspended or not.

THE COURT: But you had the violation?

THE WITNESS: I had the violation in October.

THE COURT: Of '70?

THE WITNESS: Right.

Q But at the time that you showed them the license at the Transit Authority, did you know that your license had been suspended?

A No, I did not know that.

Q Thank you.

Now, it is also stipulated that in 1973 you twice applied for Transit Authority employment, first as a bus operator and then secondly as a bus cleaner?

A That's correct.

Q Now, when you were rejected for employment as a bus operator, were you on methadone? Were you still on the methadone program?

A I was in my last week of the methadone program.

Q When you say in your last week, what do you mean?

A Well, I went up on March 9th, I was supposed to take my last dose on March 16th, which was at, you know --

Q A week later.

A Yes, about seven days later.

Q Now, did you notify anyone processing you at the Transit Authority that in fact you were within one week of the end of your methadone program -- of your detoxification?

A They give you a questionnaire form to fill out and I checked off that I was receiving drug treatment and the nurse she asked me was I on methadone and I said yes, I was in my last week, and you know, she didn't say anything.

Q Then one month later, when you applied for a position as a bus cleaner, did you again check off that you had participated in a drug treatment program?

A Yes, I did.

Q Were you questioned about it on that second occasion or third occasion?

A Yes, somebody asked me about it, you know.

Q What did you tell them?

A Well, you know, I told them, you know, that I received treatment, so on and so forth.

Q Did you tell them that at that point you were drug-free?

A They didn't ask me. Well, yes, I believe they did ask me, and I did tell them.

Q You did tell them?

A Right.

Q Are you currently employed, Mr. Frazier?

A Yes, I am.

Q By whom and in what capacity?

A Employed by Baker, Knapp & Tubbs Furniture Company. I'm a shipment clerk.

Q How long have you been so employed?

A Since February 4, 1974.

Q What's your salary?

A $129 a week.

Q $129 a week?

A Yes, sir.

Q Thank you.

Prior to being employed by Baker, Knapp & Tubbs, where were you employed?

A The last time I was employed previous to this job was '71.

Q Keep your voice up; 1971?

A Right.

Q By whom were you then employed?

A Allegro Freight.

Q What did you do for Allegro Freight?

A Truck driver.

Q Your Honor, I'm going to take him back to 1969.

Prior to that, where were you employed, prior to

1971?

A I drove a cab.

Q You drove a cab?

A Yes, taxi.

Q Over what period, just generally?

A Two years.

Q Two years, so that would take us back to about 1969?

A Yes, right.

Q Mr. Frazier, if you were offered employment with the Transit Authority tomorrow as a bus operator, would you accept that employment?

A Yes,I would.

Q If you were offered employment tomorrow as a bus cleaner, would you accept that employment?

A Yes, I would.

MR. DALTON: No further questions.

THE COURT: I am looking at this Exhibit 31, the statement by Mr. Frazier, and there are some things on page 85 that the plaintiffs propose but the defendants have not agreed to and it seems to me that if we could just take a minute and review that, let's take the first paragraph.

Can't you agree to everything there? It's just a reference to some documents.

MR. DUNN: Is this page 85, your Honor, the first paragraph on the page?

THE COURT: Right.

MR. DUNN: Is it a paragraph that begins "Bus Operator".?

THE COURT: Right.

MR. DUNN: That's carried over from the preceding page.

THE COURT: Okay.

MISS DUBOIS: Your Honor, they have agreed to that whole paragraph, I believe. Except, I'm sorry --

THE COURT: They have all the brackets.

MISS DUBOIS: Yes, they are bracketed. I'm very sorry, your Honor.

MR. DALTON: May I have this marked as an exhibit, please?

THE COURT: How is that first paragraph?'

MR. SUMMERS: Your Honor, it all sums up to the fact that he applied for the job, he was on a methadone program and he was not accepted, and that's the gist of the thing, you know.

THE COURT: Fine, and that was true of the two applications in March and April of '73,right?

MR. SUMMERS: Well, in 1976, he wasn't --

THE COURT: Wait a minute.

MR. SUMMERS: There were two applications.

THE COURT: And the reason in both instances was that he was or had been on methadone, right?

MR. SUMMERS: Right.

THE COURT: That simplifies that, fine.

MR. DALTON: No further direct.

THE COURT: Any cross examination?

MR. DUNN: I offer an authenticated copy of Motor Vehicle Bureau application for a chauffeur's license prepared by Malcolm Frazier. Malcolm Kenneth Frazier.

THE COURT: Let's have it marked.

(Defendant's Exhibit G, marked for identification.)

MR. SUMMERS: I will cancel the former G.

THE COURT: You are offering this in evidence?

MR. DUNN: Yes, your Honor, specifically as to Question 5:

"Have you been confined to an institution or received treatment for narcotics addiction?" which is answered in the negative.

And for the statement on the application stating that false statements are made punishable as a misdemeanor.

MR. DALTON: Your Honor, what is the date on that? I have not seen it.

MR. DUNN: I offered it to you.

MR. DALTON: You did not.

THE COURT: January of 1973

Okay, any objection? I will receive it.

MR. DALTON: No objection.

(Defendant's Exhibit G, received in evidence.)

MR. DUNN: I ask the Court to take judicial notice of New York State Penal Law Section 210.45.

THE COURT: All right. What else?

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